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T H O U G H T S
O N
S U B S C R I P T I O N
T O
R E L I G I O U S T E S T S,
P A R T I C U L A R L Y T H A T R E Q U I R E D B Y T H E
U N I V E R S I T Y O F C A M B R I D G E,
O F C A N D I D A T E S
F O R T H E
D E G R E E O F B A C H E L O R O F A R T S,
I N A L E T T E R T O
T H E R E V. H. W. C O U L T H U R S T, B. D.
F E L L O W O F S I D N E Y C O L L E G E, A N D M E M B E R O F T H E
C A P U T S E N A T U S.
W I T H A N
A P P E N D I X.

By *WILLIAM F R E N D, M.A.*
F E L L O W O F J E S U S C O L L E G E, C A M B R I D G E.

T H E S E C O N D E D I T I O N C O R R E C T E D.

“ HE CAUSETH ALL, BOTH SMALL AND GREAT, RICH AND POOR, FREE AND BOND, TO RECEIVE A MARK IN THEIR RIGHT HAND, OR IN THEIR FOREHEAD: THAT NO MAN MIGHT BUY OR SELL, SAVE HE THAT HAD THE MARK, OR THE NAME OF THE BEAST, OR THE NUMBER OF HIS NAME.” REV. XIII. 16, 17.

L O N D O N :
P R I N T E D F O R J. J O H N S O N, N O. 7 2, S T. P A U L ' S C H U R C H Y A R D.
A N D S O L D B Y T H E B O O K S E L L E R S I N C A M B R I D G E
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P R E F A C E

T O T H E

SECOND EDITION.

IN the early ages of the church the world was filled with complaints of the cruelties she suffered from both jews and gentiles : gaining strength by degrees, and finding herself in a situation capable of resistance, she repaid her former wrongs with tenfold vengeance on her adversaries. The cross was erected in triumph in the capital of the world : the oracles of the gods were silenced : the mouth of philosophy was shut, and the unenlightened heathen, lamenting his ancient worship, frequently renewed it when the rocks or woods afforded him a retreat from the savage priests of the new idolatry. The church triumphant forgot her former apologies, and having defeated her enemies, became a prey to civil dissensions. A civil war is at all times remarkable for its cruelty : cruel then must that war have been, when the passions were excited only by a zeal, real or pretended, for religion.

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The wars of the church afforded sufficient reason to a heathen emperor to declare, that of all savage beasts he had either seen or heard of, a christian was the worst. The history indeed of the church lays open to our view scarce any thing but scenes of deadly feud: the arian with the athanasian, the greek with the romish church, the romish church with the protestants, the lutherans with the calvinists, the english church with the dissenters, each exercised against the other the most inveterate malice and cruelty, and, each as in its turn victorious, amply verified the testimony of the emperor.

The zeal of the romish church has depicted in the liveliest colours the horrid outrages committed by barbarians on her saints; the protestants in their turn shew the same pictures under a change of names: Cranmer presided at the trial of a heretic, and Calvin gloried in the murder of Servetus.

The philosopher reading this history, stained in every page with the blood of thousands of his species, looks on the disputes which occasioned such ravages with contempt, and on the actors in the bloody scenes with horror. Indeed the mind of every man recoils at the recollection of these transactions: here are no generous passions excited, we see no instances of magnanimity on the side of the conquerors, but the victory is gained, and the sentence of death is passed by a cruel and vindictive priest writing with composure in his study. Yes! the philosopher and every man of feeling and honour must be shocked at the very name of the church, a name inimical to virtue, inimical to religion, inimical to the best and dearest rights of mankind. But let not the philosopher, nor the man of feeling and honour associate

ciate together the history of the church and of Jesus. The mild and amiable founder of christianity taught mankind to be good and to be happy : the church, in every part of the world, endeavours to enslave mankind, to make men hypocrites and knaves.

That "priests of all religions are the same" is the standing theme, it is said, of every profane person, who endeavours to cover his own incredulity or debauchery under an affected concern for the liberties of mankind, or a detestation of certain vices, which at various times have infected a few among the clergy. It may be so. I do not pretend to vindicate those who are incredulous from want of inquiry, or debauched through want of principle. Yet such men are capable of discerning the vices of others, and the priesthood in vain covers by hypocrisy the secret love of arbitrary power. We do not applaud the antiquated prude, that exposes malignantly the frailty of her sister, yet the most amiable of the sex cannot pardon the infidelities of an adultress.

In holding up the church to public view as impious and detestable, I do not involve in one common censure every individual, who has been initiated in her mysteries. The humble curate and the benevolent pastor, whom ancient prejudice, or the determination of parents, have initiated under the banners of falsehood, who misouided early in their lives, preach up a better doctrine than the church has given them, and imitate the founder of christianity rather than modern prelates ; these men are unhurt at the reproaches cast on their profession ; they are far removed from the intrigues of bishops, are rarely seen in palaces, and instruct their flock with a meekness worthy of a better cause. And virtue is not always confined

to the inferior clergy ; there has been a Ganganelli among the popes, and I myself have experienced that condescension and affability in the highest station of the English church, which is too often unknown among its inferior dignitaries.

It is the institution * we despise, not the individuals who compose it. As a man, I hold it in contempt ; because it has always been unfriendly to the civil liberty, the domestic comfort, the moral and literary improvement of man : as a christian, I abhor it, because it is entirely repugnant to the conduct and express command of our Lord and Saviour Jesus Christ.

I do not speak thus out of pique or resentment. My fears at one time suggested much greater evils to me than I have hitherto experienced. The voluntary resignation of part of my income, and of all expectations from the church was a necessary sacrifice to truth. The loss of a civil employment, and two thirds of my remaining income, were to be expected from the prevailing maxims of the church. Still I rejoice, that we live in happy times compared with those, when a Cranmer was dragged by an academic audience to the stake ; or a Whiston was exposed to the arbitrary proceedings of a vice-chancellor and the heads of colleges.

The university of Cambridge † is entitled to a considerable degree of credit for the frequent attempts

* Le Prêtre corrompu, dans sa perversité,
N'admet qu'une vertu ; c'est la crédulité.
Il prosérît la justice, et la fière ignorance
Fait plier à son joug l'aveugle obéissance.
La sombre hypocrisie exige des humains
Non le culte du cœur.

† The only person who attempted publicly to vindicate subscription, on the last attempt, was Dr. Kipling, Deputy Professor

tempts that have been made by several of her body, to abolish the badge of slavery introduced by

Professor of Divinity, who, in a commencement speech, by his scurrility and want of argument, gave universal disapprobation. Dr. Edwards very properly called on him to make good his assertions; but the Deputy, persuaded that the public will not acquiesce in a list of quotations from obsolete statutes, has hitherto been silent.

To the Deputy Professor of Divinity in the University of Cambridge.

Rev. Sir.

Having taken an active part in the *Grace for the abolition of subscription at the time of taking the degree of Bachelor in Arts*, which you was pleased to make the subject of your Commencement Oration, and to censure with unbecoming virulence and asperity of language; I think myself fully entitled to request of you, in this open manner, to lay your speech before the public, as I might be guilty of injustice, both to you and myself, should I attempt to answer it from memory alone. Whenever it appears in print, I pledge myself to reply to each particular, which may appear to merit animadversion. In the mean time, let me seriously ask you, whether the language, which you made use of in speaking of Dr. Priestley, was worthy of a divine, a christian, or a gentleman? Surely, Sir, the imputation of *wilful and deliberate lying* ought not to be fastened upon any man but in cases of moment, and where the intention of propagating a falsehood is palpably manifest. When you favour the public with your composition, I hope clearly to shew, that if Dr. Priestley has been guilty of any oversight in the passage you allude to, it is merely a *verbal inaccuracy*, not a *misrepresentation of fact*. Believe me, Sir, whatever opinion the world may entertain of Dr. Priestley's theological notions, they will not hesitate to ratify with their unanimous suffrages his superiority over the Deputy Professor in every department of science and literature: Have you displayed that knowledge in divinity, that skill in criticism, and that command of language, which are indispensably necessary for the proper discharge of your office? It is idle to alledge,
that

by a pedantic tyrant, and now upheld by the fordid interest of a few. Her sister on the banks of Isis bends under the galling yoke : overcome with torpor and sloth, she even hugs her chain without a single attempt to be relieved. There the youth, on his admission, is compelled to sign thirty-nine articles which he never read, and is taught, by this early violation of honour, to disregard every principle of morality, which his tutor might afterwards pretend to inculcate.

that you have not studied these points : for, if you perceived yourself not qualified for the employment, why did you undertake it ? and why, since you did undertake it with an acknowledged consciousness of your inability, do you now decide upon controverted topics with all the dogmatical assurance of the most profound theologian ?

Permit me therefore to submit to your attention a few friendly admonitions :—Presume not in future to stand forth as the champion of orthodoxy :—Cease to weary the University with your feeble and impotent defences of the established liturgy :—be satisfied with supporting in your school the shadow of a disputation :—Publish your fac-simile of *Beza*—*but without a preface* :—If you regard not the character of another, learn at least to respect your own.

I am, Rev. Sir,

Your obedient servant,

T. EDWARDS

P R E F A C E

T O T H E

F I R S T E D I T I O N.

THE writer of the following pages is well aware, that there are in them passages, which will give offence to the orthodox; but he is very sorry, that his respect for the gentlemen of that persuasion, must give place to his regard for truth. Sincerity appears to him of much greater importance, than the fictitious advantages said to be derived, from a particular mode of worship: and as, by a painful and impartial study of the holy scriptures, he has discovered the horrible impositions, under which he for several years laboured, he thinks it his duty to take the present opportunity, of disavowing every principle, contrary to the gospel of his Lord and Master Jesus Christ, to which, from the prejudices of his education, he has at various times subscribed. While he thus endeavours to remove the scandal, that he may have brought on the christian profession, by a compliance with the traditions of men, and gives a public testimony

mony of his disbelief of various corruptions of christianity, he requests the reader to consider the natural causes, by which a young man was deceived, and to accept of the following declaration, as an atonement for the errors of his conduct.

Whereas I, WILLIAM FRENCH, did at several times, within the years 1780 and 1784, subscribe to the articles and doctrines of the church of England, as by law established, being now convinced, by an attentive study of the holy scriptures, that many things contained in the said articles, have no foundation whatever in the holy scriptures, I do hereby declare my disbelief of many of the said articles and doctrines, particularly of the second, the fifth, and the eighth articles of that summary of faith, commonly called the thirty-nine Articles: and whereas from November 1780, till June 1787, I did officiate as a minister of the church of England, I do moreover declare, that there are many parts of its liturgy, to which I have insuperable objections, particularly to the prayers addressed to Jesus Christ, and to the Trinity; and as universal benevolence seems to be the striking character of the religion of Jesus Christ, I cannot conclude this declaration, without expressing my abhorrence of a tenet inculcated in one part of the said service, by which every person differing in opinion, as to some obscure points of an obscure creed, is doomed to everlasting perdition.

See the creed, vulgarly ascribed to Saint Athanasius, and appointed to be read on certain days in all churches. The writer of the declaration,
wanting

wanting words to express the horror he feels, at the presumption of mortals, to inflict a sentence of condemnation on by much the greater part of mankind, must beg leave to borrow a passage on the same subject, from the sermons of Dr. Watson, the present bishop of Llandaff.

“ Ye proud and persecuting ecclesiastics! by
 “ whatever titles ye may be distinguished, to
 “ whatever sect ye may belong, who in the fury
 “ of your zeal exclude from the mercies of God,
 “ all men who cannot apprehend the doctrines
 “ of christianity, in the same sense in which
 “ they are understood by you, by your church,
 “ or party; who arrogate to yourselves the
 “ high prerogative of deciding all controversies,
 “ removing all difficulties, explaining all mys-
 “ teries; who rashly presume to judge, and to
 “ condemn the servants of another master; could
 “ ye be brought to know what spirit ye are of,
 “ to become the true disciples of the meek, the
 “ patient, the commiserating Jesus; how would
 “ the church of Christ, as a pattern of peace,
 “ love, and charity, allure into its bosom every
 “ beholder; instead of frightening jew and gen-
 “ tile from it, as a monster pregnant with per-
 “ secution for conscience sake.” P. 168.

To those persons, who may be surpris'd, that the writer should openly declare his opinion, he recommends the perusal of COURAYER's last Sentiments, and the following extract from the Preface to the last Thoughts of Dr. WHITBY, whose Commentaries are in great reputation, though he out-lived many opinions, which he had published in them. And if these persons could not leave the world without a bequest of their last sentiments

sentiments to it; which perhaps through fear they concealed while they were alive; it surely is highly proper in every one, who lives in better times, to express his conviction of the many errors, which have either entirely destroyed the great truths of christianity, or overwhelmed them with indifference or fanaticism.

“ It is rightly and truly observed by JUSTIN
 “ MARTYR, that an exact scrutiny into things
 “ doth often produce conviction, that those
 “ things which we once judged to be right, are,
 “ after a more diligent enquiry into truth, found to
 “ be far otherwise.---And truly I am not ashamed
 “ to say this is my very case. For when I wrote
 “ my Commentaries on the New Testament, I
 “ went on (too hastily, I own) in the common
 “ beaten road of other reputed orthodox divines;
 “ conceiving that the Father, son, and holy ghost,
 “ in one complex notion, were one and the
 “ same God, by virtue of the same individual
 “ essence communicated from the Father. This
 “ confused notion I am now fully convinced by
 “ the arguments I have offered here, and in the
 “ second part of my Reply to Dr. WATERLAND,
 “ to be a thing impossible, and full of gross ab-
 “ surdities and contradictions.”

T H O U G H T S
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S U B S C R I P T I O N, &c.
IN A LETTER TO THE
REV. H. W. COULTHURST, B.D.

S I R,

IT has been a fashionable topic lately in the university, that a member of the caput may act without any regard to law, religion, or conscience ; that he may refuse his consent to a grace, in the highest degree beneficial to the body at large, without being questioned for the reasons of his conduct. From what source these doctrines are derived, I am at a loss to determine. The authority of his majesty, with respect to an act of parliament, is as clearly laid down by the laws of the nation, as the power of the caput by our statutes ; yet no minister would have the insolence, in these times, to advise the monarch to exert his prerogative according to the dictates of arbitrary caprice. You, Sir, pardon the boldness of the expression ; you, Sir, though a member of the caput, are not greater than the minister of the day, or his majesty. You, Sir, are certainly invested

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with

with the power of a negative on every grace, offered in our senate; yet you, Sir, are bound to exert this power according to reason and justice, not in an arbitrary, wanton manner.

With these opinions of your prerogative, give me leave, Sir, to express my surprize, that you should have prevented the grace of Dr. Edwards from being proposed to the members of the senate*. You knew that it was on a subject, which had occasioned much debate at different times, not only in the university, but in the nation at large. You knew that it was not contrary to our statutes. You knew that subscription to a religious test was originally imposed by an act of the senate, and had frequently been altered by the same authority. Surely then, it became you, Sir, to be in some degree diffident of your own wisdom, and to allow to your brethren a portion of judgment. Either you assumed a degree of self-sufficiency, which, from my long acquaintance with the many excellent qualities you possess, I am loth to attribute to you; or, you supposed that the senate were degenerated from the standard of ancient times, and not fit to be intrusted, like their predecessors, with questions of importance.

The exertion, Sir, of your power is a public act. As such, notwithstanding the extraordinary notions maintained concerning that power, I shall esteem the exercise of it liable to the censures of the

* The following article appeared in the Cambridge paper of Dec. 14, 1787. On Tuesday the 11th inst. a grace for the removal of subscription to the usual form, at the time of taking the degree of Bachelor of Arts, was presented by the Rev Dr. Edwards to the caput, which was rejected without assigning any reason for this exertion of their power. The members of the caput for the present year are, Dr. Farmer, as Vice-Chancellor, Dr. Turner, Dr. Jowett, Dr. Glynn, Mr. Coulthurst, and Mr. Wade.

the public, and call upon you in this open manner, to justify yourself before that impartial tribunal. The question was simply this, Whether a young man of twenty, whose time has been fully employed in the pursuit of natural knowledge, should subscribe to doctrines which he has never examined ; whether a young man of twenty, who has been encouraged to exert his faculties, without restraint, in the pursuit of philosophical truth, should embrace, without hesitation, certain opinions, on which men, the most respectable for learning and wisdom, have in every age and nation been greatly divided ? Extraordinary as it may appear to the public, you, Sir, who are not without distinction among us for philosophical merit, have, by an act of arbitrary power, taken to yourself the decision of this question : but as it cannot be presumed, that you have acted without a motive, both in justice to yourself, and to the members of a learned body, you are bound to produce your reasons for this conduct.

You will, perhaps, Sir, be displeased with my statement of the question ; if so, indulge us with your own. Having subscribed to the different forms, required by the university, at first, like yourself, and other young men, without any conviction, or even examination, of the doctrines to which I subscribed ; and afterwards firmly believing, according to the knowledge I then had, the thirty-nine articles of the church of England, I do not think myself entirely incompetent to examine the effects produced by such subscription, and its real utility. From what I have done myself, and what I daily see others do, I must maintain the opinion already advanced, that a young man subscribes to doctrines which he has never examined, and on which there is a vast variety of opinions.

To judge properly of these positions, it will not be necessary to enter into a long detail of the studies, in which a young man is engaged, before he takes his first degree. Let it suffice, that a course is laid down for him, requiring, during the three years allotted for it, a degree of assiduity and diligence, to be met with only in the students at Cambridge. In this course, you know very well, that divinity has no place, and that from the multiplicity of business in which the student is engaged, it is impossible for him to give it the attention a subject of such high importance demands. At the end of somewhat more than three years, when the time is come that he must display his knowledge, and for four days undergo an examination, not to be paralleled perhaps in Europe; when his mind is wholly intent on the meditations of his past years, and he is full of anxiety on the event of the approaching contest, as a previous ceremony to his admission into the senate house, he is called upon to declare his sentiments on religion. Were this done with the solemnity such an act required, a pause might be made in the young man's thoughts, and he might naturally be supposed to perform it with a due sense of its importance. He might be led to inquire, whether he really did believe what he then subscribed. But the fact you know to be this; the candidates go in numbers to the proctor to pay their fees; from thence to the registry to sign their names. Their conversation is on the topics most interesting to them, the approaching examination. The religious test is entirely out of sight, and if the Koran or Shanscritte were to be subscribed to, the imposition would scarce be discovered by the subscribers. I do solemnly declare, and I believe it was the case with many others, that a considerable
time

time elapsed before I knew precisely what I had subscribed, and actually supposed, till I was better informed, by an elderly member, of the university, that my subscription had been to the thirty-nine articles.

If credit, Sir, may be given to this account, and if not, I recommend it to you to state it otherwise, before the public; it appears that all, or by far the greater part of the students subscribe without any examination or accurate knowledge of the things subscribed: in other words, they consider subscriptions as a matter of form*.

From the consideration of the fact, let us turn our thoughts to the form subscribed, with the history of its introduction into the University. The form is, "I *A. B.* do declare, that I am, *bona fide*, a member of the Church of England, as by law established." The original form was "We whose names are under-written, do willingly, and ex animo, subscribe to the three articles before-mentioned, (namely, the three articles in the 36th canon) and to all things in them contained." † Till the reign of James the first, no subscription was required; but this wise monarch, who was a

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presbyterian

* Just as an oath is considered in the Customs. Whiston and Clarke were one day on board a small ship belonging to Lowestoff, when they observed two seamen jointly lifting a vessel out of the hold. Another, standing by, asked one of them, who was looking down the hold, why he did not turn his face away? Upon which he turned his face away, but continued to assist in lifting as before. The meaning of which they understood to be this: that he would be obliged to swear he *saw* nothing taken out of the hold; not that he *took* nothing out of it. This, said Whiston, is a seaman's salvo for such errant perjury; and this is the consequence of our multiplying oaths on every occasion. Hist. Memoirs of the Life of Dr. S. Clarke.

† Of these two forms it may be said with the old proverb, *idem Monachus sed alio cucullo indutus*.

presbyterian in Scotland, an episcopalian in England, and a tyrant every where, determined, that all students should subscribe to his ridiculous fancies. With his letters the University servilely complied *. The house of commons, in the year 1640, did not enter into the sentiments of this Solomon of the North ; for they declared, “ That
 “ the statute, made about 27 years since in the
 “ university of Cambridge, imposing upon young
 “ scholars a subscription, according to the 36th
 “ article of the canons, made in the year 1603, is
 “ against the law and liberty of the subject, and
 “ ought not to be pressed upon any student or graduate whatsoever.” This declaration had only a temporary effect in Cambridge till the year 1772, when the question on subscription having been much agitated, both in parliament and the university, and the absurdity of demanding the subscription of a young man to the thirty-nine articles being fully seen, it was thought necessary to take some step to remove the odium under which the university laboured, in the eyes of the world, from a practice contrary to religion, liberty, and common sense. The ruling powers would not admit a grace, offered by a man, whose enlarged and comprehensive mind saw the folly of making barriers to the investigation of truth. He proposed, that every one who performed the exercises required by the statutes, should be admitted to his degree without any subscription. But philosophy had not sufficiently opened the eyes of men : they were dazzled with the splendor of truth ; and, half shut, admitted only a feeble ray. The subscription was
 modified

* For you know that sort of men are taught rather to obey than understand ; and to use the learning they have, to justify, not to examine, what their superiors command. Letters from a person of quality, Locke's Works.

modified by a man of a very different character, who, not willing to give up the least point, thought, that by the insertion of the words "bona fide," the public might, by the specious change, be again lulled to sleep. This subscription is now binding on every candidate, for the degree of Bachelor of Arts. In last June, notice was given, that a Grace would be presented in the following term, for the removal of this subscription; and papers were distributed, containing the state of subscription required by the laws of the university. It was presumed, from the length of time intervening between the notice and the proposal of the grace that every member of the senate would give the subject ample investigation, and determine on it without prejudice or partiality. The result of these preparations was, that when it was proposed by one of the first literary characters among us; you, Sir, thought fit to stop all proceedings; and, by your ipse dixi, to prevent the determination of the senate on its merits.

Is it consistent, Sir, with your character as a christian, and a teacher of christianity, to act in a manner, which, as I have said to you in private, I must also maintain it openly, is diametrically opposite to the plan of your master and his apostles? They endeavoured to teach people; you will not teach, but insist upon assent. You do not desire conviction, but compliance. You care not whether we do, or do not, understand the tenets of your faith; and have therefore determined in your own mind, that all shall subscribe to what they cannot possibly comprehend. This latter position I will endeavour to prove.

A church is a collection of men joined together by some religious principle of union. To be a member of any church, a man must necessarily

assent to the principles of union, laid down by the society which compose it. These principles are of two kinds ; relating either to the form of government, or to the doctrines of the church. In the church of England, the principles of union are established by law. A person may conform to any church, by attending its services ; but he cannot be a member of it unless he believe its doctrines : again, he may believe the doctrines ; though, if he do not conform to the discipline, he is not a member of that church. There are instances, abundantly supporting my argument, in our own nation. Trifling is the difference of doctrine, between an orthodox presbyterian, and a member of the church of England. Yet the one cannot be a member of the other's church, on account of the difference of forms ; and the history of the two sects is full of that rancor and animosity so much in fashion, since the corruptions of christianity have been upheld in the world, by the arm of power. A person may be brought up in either of these churches, by habit or education, frequent their places of worship, and yet not be a member of either. The single circumstance of going to this or that church, does not determine the question. Some one, perhaps, will be ready to say, if this be the case, Whence come all the quarrels in the world, since so few people, according to this account, are members of the church for which the others fight, squabble, curse, swear, bear malice and bully ? You and I, Sir, who are a little in the secret, may whisper in the ear of such an one : two-thirds of these quarrels proceed from knavery and priest-craft. Let them alone ; let them kick and cuff ; let them throw into prison their antagonist ; starve him to death, or more mercifully broil him on a slow fire for the good of his soul.

foul. These poor wretches either care nothing for, or understand nothing of, the religion for which they contend. Some foreign circumstance has got possession of their minds. The priest, for temporal gains, delivers over the heretic to the secular arm ; and the mob, from the instigation of a factious leader, burn and destroy in the metropolis *.

But let us leave these poor wretches to their own mistaken notions, and go on with our subject. Should a person declare that he is verily and sincerely a member of any church, it must be understood, that he not only conforms outwardly to its ceremonies, but believes its doctrines; otherwise it would be sufficient to say, "I do declare that I do conform to such a church." Now, no one will, I believe, allow this to be the meaning of the words, "I do declare that I am *bona fide* a member of the church of England;" that is, seriously, conscientiously, and truly, a member of that church; conforming to its practice, and believing its doctrines. It is well known, that in England there is no dearth of sects. There are Papists and Calvinists, and Church of England-men, Baptists and Antinomians, Socinians, Arians and Sabbatarians, Presbyterians and Methodists. I have not enumerated a tenth part of them: they have all particular tenets; and unless a person believe them, how can he declare that he is "*bona fide*" a member of any of these sects. With respect to the tenets, they appear to me not to be learned or refuted in a hurry. The young man of Oxford, had probably studied his religion before he
went

* Let it be remembered, to the disgrace of this age, and of Englishmen, that in the year 1780, the state was brought to the verge of destruction by a mob collected on the specious pretext of religion.

went to convert the Jesuits ; yet they were too hard for the poor fellow, and made a convert of him. The tenets of the church of England are not to be learned more easily than those of any other church, whether you take the thirty-nine articles in the lump, or such as are called the leading points. At any rate, they are said to depend on a book, called the Bible, for their support. Now this book is not to be digested in a moment : and yet, consistently with the declaration of a young candidate for his degree, he must have read this book, brought the opinions of his church to the test ; and having fully weighed the doctrines with the proofs, he may then sincerely declare, if his inquiries have been favourable to the established faith, that he is a member of the church. How a young man, engaged as I have described him, can possibly do this, appears to me perfectly incomprehensible ; and if he do it not, the declaration seems to be a matter of farce, a mere play upon words.

But it is urged by some, that there is no necessity for him to have examined all the folios of theological controversy, which, involved in cobwebs and dust, now make the basis of learned libraries. It is sufficient for him, that in general he have no objection to the doctrines, and like his own church better than any other. *Error latet in generalibus.* This opinion either means something or nothing. If it mean any thing, it is that he likes the doctrines in the lump, though he does not trouble himself about any particular notion. If the thirty-nine articles were like a rich plumb cake, whose excellence depends on the proper mixture of its component parts, this argument would be valid. Again, how can he like his own church better than any other, unless he
know

know something of the others ; which a young man of twenty is not more likely to do, than he is to comprehend the thirty-nine articles of the church of England, or the decrees of the council of Trent.

Upon the whole, then, I, Sir, rest my position on this basis, that the form has a meaning—that that meaning is not a declaration solely of conformity—that the doctrines of the church are involved in it—that a young man of twenty cannot know whether they are right or wrong ; and, therefore, that the university, contrary to her principles in other studies, obliges a student to subscribe to things which he does not understand.

As so great a sacrifice of faith is required from our youth, it may not be useless to examine upon what grounds a sentiment so contrary to the ideas of men of ordinary capacities, could have been maintained. From the moment that the question of the repeal of subscription was started, I attended diligently to the objections that were raised against the grace. The arguments, however diversified, flowed, as will appear in the sequel, from one single source. They were chiefly these : that the grace came from the unitarians—that a removal of subscription implied a defection from the church—that as the state had lately refused to take off the yoke of bondage from the neck of the dissenters, it would ill become us to act with liberality—that the establishment of the church is interwoven so closely with the constitution, both of the nation and the university, that the most distant attack upon it, would be detrimental to the state—that the statutes both of the university and private colleges, are planned on the idea, that this place should support the established religion, be it right or wrong—lastly, and principally, that it
would

would open the door to dissenters of all denominations.

First, That it came from the unitarians. Is the grace less useful, supposing this to have been the fact? Is the grace less useful because it comes from men who have a firm belief in the Creator of the universe, the God and Father of our Lord Jesus Christ; who look upon the state of their existence here, as a state of trial; and, through their Lord and Saviour Jesus Christ, and the promises of his God, look forward to a future state of eternal happiness? Do not these men regard, with as severe an eye, the vices that degrade human nature, as the orthodox? Do they claim a right, from their belief, to disobey any laws of the state, or the university; or rather, unless these laws interfere with the duty they owe to God, prescribed in his revelation, do they not adhere more rigidly to them than the orthodox? But the orthodox, unfortunately, know neither the tenets of their own sect, nor of those persons whom they affect to vilify, much less are they acquainted with the principles of the religion of Christ and his apostles, who exhorted all to examine diligently for themselves, and instead of confining the mind by bands and fetters, universally prohibited them from changing the commandments of God, for the traditions of men.

I have no objection, however, to this argument, particularly as it was urged with so much warmth by the adversaries of the grace. They evidently declared by their fears, that the number of unitarians in the university must be very considerable. It may be so. But within the small sphere of my acquaintance, I cannot count up more than twenty masters of arts, who openly

avow their sentiments, and renounce entirely the trinitarian worship of the church of England.

It was urged to those, who imagined that the removal of subscription implied a defection from the church, that the church must surely stand upon better ground than the subscription of a young man of twenty, especially as her doctrines and her forms were not involved in the question. But in vain does one attempt to argue with men who have got a word, like a magical talisman, to answer every turn. The church was the watch-word in this contest; like original sin in the mouth of the calvinist, or grace with the methodist, the church obtruded herself every moment; at the sound of the word orthodoxy stood appalled, and trembled for fear, lest the steeple should overwhelm him with its ruins!

The next argument was divulged with greater confidence: that as the state had rejected the petition of the dissenters, this was not the time for us to remove tests. How easy is it, Sir, to confound a plain question. The young students are not dissenters: it is not desired that they should be released from subscription because they dislike any form of church government, but simply because they are not old enough to examine the question. Besides, if we are to attend to the squabbles of parliament, and to be guided by the decisions of party, as one or other happens to gain the majority, let the resolution of 1640 be attended to; when, without disparagement to the present house of commons, there sat in it men of integrity and virtue; lovers of their country, of civil and religious liberty. The mean idea that our senate is to depend on the beck of a minister, is not suited to the present times; on the contrary,

trary, I am confident, that if in this place every proposition respecting learning and religion were thoroughly canvassed, its decisions would be attended to with respect by the world at large. We are supposed to apply ourselves constantly to the discovery of truth, and it is our duty to be the first to declare it to our country.

A formidable argument now appears : that as the establishment of the church is interwoven closely with the constitution, both of the nation and the university, the most distant attack on it would be detrimental to both. I take the liberty, Sir, of denying this proposition, in the whole, and in all its parts. With respect to the attack, I deny that the church is attacked : and were an attack made on the church, I deny that it would be detrimental to the state. Would the state be ruined, if all kinds of subscription were removed, whether the subscribers be parsons or doctors of physic ? Would our soldiers be less courageous ? Would our sailors be less daring ? Would the clergy be less pious ? Would the stocks rise or fall a single farthing on that account ? Would the members of our house of commons be less zealous in the support of our rights ? Would the taxes be encreased ? In short, Sir, you would do mankind a favour, by mentioning a single circumstance which can countenance the absurd position of danger to the state, from the removal of our subscriptions. We live, thanks be to God, in other times, than those, when a vile priest could tear the crown from the brows of his sovereign, or, with impious contempt, trample on the rights and privileges of his fellow citizens. But this argument deserves farther consideration.

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The alliance of church and state is a very fashionable topic *. Take the word "church" in any sense you please, it does not appear, that the state will be in the least endangered by any attack upon it. Let it be a collection of men enjoying immense incomes, places of honour and dignity, and high founding titles. Now I will suppose, what many will be apt to call a violent attack, and yet maintain, that the state is not in the least endangered. The attack is simply this—take away its high founding titles, which I cannot find in the book of the New Testament: take away its tithes †, for I see

* The very word "alliance," shows the impertinent folly of the high priest. Alliances are formed between independent societies. How came the church to be an independent society? From the New Testament it appears, that subordination to civil government was inculcated both by example and precept. The civil rights of a man are not supposed to be at all affected, nor ought they, by his religious opinions. On the other hand, it was the great aim of popery to establish the independency of priests, that is, to form an imperium in imperio, of which his holiness was to be the supreme head. Having once gained this point, he was in effect, not only the spiritual, but the temporal, head of all Europe.

† Tithes appear to me injurious to religion, and detrimental to the state. Injurious to religion, because they have a tendency to make the pastor independent of his flock—little anxious after their spiritual welfare—unconcerned about religious duties—desirous of gain—a lover of pleasure, more than a lover of God.—They are detrimental to the state, because they discourage agriculture—create vexatious suits—are oppressive to those, who, not following the established dogmas, are obliged to contribute to the support of the teachers of them. It may appear a paradox, but I think, that they are not the best payment of the clergy in general. Particulars, without doubt, are much benefited by this mode, namely, lord bishops, great dignitaries, and pluralists. But how small a share of them falls to the most laborious and useful part of the order, the officiating clergy! Besides, I can scarce think them constitutional. Our sovereign, our army
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see nothing about them in the word of God : send my lords, the bishops, to their spiritualities, to the flocks of which they are overseers. I protest, Sir, that if all this were done, I do not think that the French would invade us, that the Bank would be burned, that there would be the slightest insurrection among the people. The deliberations of parliament would not be interrupted ; the king would

and navy, are supported by annual taxes ; this is a perpetual tax, laid on in barbarous times by our superstitious ancestors. They could give away, it is allowed, their lands, but how could they appropriate the produce of those lands, which, in a course of time, from the industry of the cultivator, become worth a hundred times their original value. One would not make too great an innovation in a moment ; but if in Yorkshire and Northumberland, the experiment were tried, and, upon the decease of every incumbent, the tithes should cease in his parish, religion would perhaps gain ground ; and, if the experiment succeeded, other counties might upon petition have the same privileges allowed to them. In this case, patronage and other ecclesiastical rights are supposed to continue as usual. When this reform has taken place, it may not be amiss to appropriate the revenues of the cathedral and collegiate churches, in these counties, to the purchase of tithes in lay-hands, by which the occupiers of land will be freed entirely from this odious tax.

•• Many of my clerical friends have been offended at the preceding note, but they have given me no reason why I should change my opinion. So far from altering a word in it, were I a member of the house of commons, I should take the first opportunity of calling the attention of the house to this ecclesiastical grievance. I would propose, that after a certain day, (suppose ten years from the time of passing the act,) tithes should cease in this island ; that the estates in the possession of bishops, cathedral and collegiate churches, or appropriated to livings, should be sold. The money accruing from this sale, together with Queen Anne's bounty, and the sale of tithes, from the demise of an incumbent to the time of general cessation, to be appropriated to the payment of the clergy surviving the cessation of tithes, and to the indemnification of lay-patrons for the advowsons of livings. The parliament that passes such an act will live for ever in the grateful memory of posterity.

would maintain his just rights, and the minister would lose a few votes. But when I say such an attack would not be detrimental to the state, I suppose, which is allowable, that the attack were made on the institution itself, not on the individuals at present in it; for it would be unjust in the extreme, to deprive any one of those rights, in the quiet possession of which, he has been countenanced by the laws of his country.

Again, let the attack be upon the doctrines of the church, and let us suppose, that all men were permitted to believe, what seems to them to be most agreeable to the word of God. If the whole nation believed, that Jesus Christ was a man like other men, should we be less firm in our engagements to each other, less willing to defend our king and country? Should all believe, that a child of a day old would be equally safe in the hands of Providence, whether some water were sprinkled in its face or not; would the state become a bankrupt through this opinion? Should they all cry out with one voice, that religion is the great concern between man and his Creator, not to be influenced by rewards or penalties; that they who perform the duties of civil society, are equally entitled to its benefits; would the land be untilled? would the manufacturer forsake his loom, or the tradesman his shop? We mistake by confounding our ideas. There are in this kingdom about eight millions of persons, the seven million and odd will not be undone, should ten thousand clergymen depend on them for support, and receive countenance only in proportion to the duty performed. We do not hear of the rights of physicians, yet are they, in strictness of reasoning, as much entitled to the produce of our lands, as any ecclesiastical pluralist.

The fifth argument is drawn from the nature of our public and private statutes, which are planned, it is said, on the supposition, that we should maintain the religion of the state, be it right or wrong. Unfortunately for the favourers of this argument, the greater part of our statutes was made before the reformation, at a time when religion was supposed to depend on the decrees of a Roman pontiff, not on acts of parliament; when the state did not dare to make any change whatsoever in the doctrines or discipline of the church.

Lastly, it is urged, that we should open the door to dissenters of all descriptions. Ye narrow-minded christians! I am much afraid that the repeal of all your tests would not have so desirable an effect. Ye narrow-minded christians! would ye shut the doors of knowledge against any of your fellow-creatures? Ye narrow-minded christians! hear the word of your lord and master; freely ye have received, freely give. Sir, I have heard this argument with astonishment and detestation. We profess to have the pure form of godliness, yet we will not impart the power of it to others. Would to God, that dissenters of every denomination had free access to the noble advantages of this place. Learning and religion are not lessened by the numbers which participate in their benefits. The dissenters are men and Englishmen; they have distinguished themselves by their love to their country, and their zeal for its liberties: they have produced within these few years some of the noblest supporters of christianity. Are we not indebted to them for a TAYLOR, a LARDNER, and a PRIESTLEY? In future times, philosophy will blush, when, at the name of the latter, she reflects on the number of her sons, who have disgraced themselves by their opposition to him;

him; and neighbouring nations observe with astonishment our inconsistency, when they perceive, that the greatest ornament of this country; he, whom every learned society in Europe is proud to inroll among its members, should be debarred, by the absurd prejudices of superstition, from a place in our universities*.

Thus, Sir, I have ventured to make some observations on the arguments produced by the admirers of subscription; not that I thought them worthy of reply, but simply to bring them forward into public view, that, if I have not enumerated all, you, Sir, or some kind advocate for hierarchical tyranny, would favour us with better reasons; and if I have, the good sense of the public will, in a few years, put a stop to such idle disputations. The question for freedom in religion is now much agitated, it desires only a free discussion, its merit stands on the surest basis, it requires neither the aid of the minister, nor the bench of bishops; but in spite of popes, councils, monks, and priests of all denominations, it will force its way over all obstacles, and establish itself firmly in the breast of every christian.

But these arguments proceeded, I said, from one single source, and that source was muddled with prejudice. The question was never considered, as it became learned men, abstractedly. Is a thing right or wrong, appears to me to be the first question; the second, Is it, or is it not expedient? The second alone was considered, the

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* In the same manner, HOWARD, the benefactor of mankind, to whom we would raise statues and monuments, is thought unworthy, by our legislature, to be even a justice of the peace. Englishmen, lovers of liberty! blush at the recital of these facts, or ye are unworthy of that liberty, which is your boast!

first was not mentioned. In the next trial I would recommend to the adversaries of the grace, to reflect first, whether it be right, abstractedly considered, for a young man of twenty to subscribe to notions that he does not comprehend ; and that being settled, it will then be time to discuss the other of expediency. If expediency alone be considered, we shall flounder about like a ship at sea without a rudder. Had the first been considered, we should not have been moved by the sneers of certain persons, who with their usual candour insinuated, that we *should* in a short time be loaded with the compliments of the dissenters on our liberality. I make no doubt, that the dissenters would have applauded the action on the ground of its rectitude ; but the university of Cambridge is not to be flattered or discouraged by the sentiments of any body of men.

Having, Sir, given my sentiments freely on our subscription in the university, I shall now call your attention to the more general question ; the religious tests required by the nation at large. These are either certain religious forms as qualifications to civil offices, or subscriptions to certain doctrines required from all who take orders. The author of the Confessional has so fully treated the latter, that nothing remains to be said upon them ; and in the house of commons every thing has been urged on both sides, that can be brought forward on the subject of the former. Every friend to religious liberty must be pleased with one effect of that day's debate ; that, however they might differ with respect to the expediency of removing a religious test, as a qualification for office, all united in exploding the ridiculous doctrine of the last century, the ideal scheme of maintaining a worship of any kind by pains or penalties.

penalties. No house of commons, not even that of 1640, could be more explicit in favour of an unlimited toleration. It is to their credit that they did so; for what right has a puny mortal to give laws to another man's faith. The experience of many ages has proved the absurdity of tethering down the conscience; and the christian religion has suffered in nothing more, in the eyes of deists, than in the intolerant principles of its professors. You discover, say the deists, you discover to us a religion, which you say came down from heaven. She stands upon a rock, and shall never be moved; the gates of hell shall not prevail against her. We allow, that her mansion cemented with gold is built upon a rock. The fabric is noble, large, extensive. Her apartments are rich and elegant. Festivity reigns within; kings are her nourishers, and queens her nursing-mothers. Her palace is guarded by thousands, and tens of thousands in regiments of motley descriptions. At one avenue stands the throne of the triple crowned monarch, who, with his cardinals, his bishops, and his monks, forbids access to the philosophic inquirer. At another sits the democratic synod, pouring down damnation upon every unbeliever. This party is not so magnificently provided for in the interior of the castle, as the other, yet are their apartments very convenient, and furnished in a neat frugal way, more suitable to their form of government. At another quarter is a tribunal, with more limited powers, the word Law restrains most of its operations. Yet are the members of it more nobly lodged than their democratic friends; and take good care, that none but a select few shall have a morsel of bread or cup of cold water. Through the several gates do now and then a few visitors straggle in, whose account

of the domestic regularity does not entirely accord with our ideas of divine benevolence. The subterraneans of this structure are loathsome, filled with unhappy wretches, whose misfortune it was, that they did not approve of the conditions of the feast above, and a still greater misfortune, that, by the law of the table, they were obliged to drink their bumper, or descend into the dungeon. At times, these squalid miserable people were brought out to be burnt for the amusement of the court : that diversion, however, now begins to grow out of fashion ; and instead of whips, and tortures, and fire, and faggot, they are content to strip a man of his coat and waistcoat, and then send him to graze on the common without money or friends.

I agree entirely with the deists, that, if they take their account of christianity from the lives and opinions of the greatest part of its pretended professors, they act like rational men in discarding the whole system : but surely it becomes them also as rational men, to inquire, whether this golden fabric be established on the basis of christianity. Whether the meek, humble, benevolent, poor, distressed founder of our religion permitted any of these extravagancies. Whether he came into the world to erect a temporal kingdom, or whether he did not uniformly oppose the ideas of his followers, when they expressed the desire of exerting a superiority over their companions or their neighbours. Whether he did not always call aloud to those to see, that have eyes to see, and to those to hear, that have ears to hear. He never said, shut your eyes, and receive my doctrines ; believe my words, or you shall not have a morsel of my bread, or my fish. In short, it becomes the deist to examine the Testament with impartiality, and
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it becomes the christian to encourage him to produce his arguments without fear of danger. Little opinion can they have of the truth of their favour's doctrine, who are afraid, lest it should suffer by investigation. The doctrine suffers more by its pretended friends, than its open enemies. From the time of Constantine to the present, it has not had a fair trial in the world; the moment it was established as the law of the state, that moment did anti-christ begin his sway, and genuine christianity was lost in tricks of politicians.

Sir, it is not a belief in christianity, or zeal for its doctrines, that establishes tests in our nation. Abuse not the sacred name of Christ. He abhors such methods of promoting his religion. Motives of policy, whether good or bad, let politicians judge, are the cause of this tyranny over the mind. It is, to keep out a set of men, who are supposed to be unfavourable to our principles of government. Having been brought up in all the prejudices of the church of England, and scarcely acquainted with any of that description of dissenters, who have been pointed out to me as these dangerous persons, I cannot pretend to say any thing of their private political sentiments. Yet, greatly as I detest the imposition of a religious restraint, the presbyterians seem to me, according to their own account of the matter, to have suffered deservedly for their intolerant maxims: and if they maintain now the same sentiments, that they did in the reign of Charles the second, I should desire their release, solely from principles of natural justice. They united with our church, say they, in time of danger, and, to oppress the catholics, did not scruple to surrender part of their own liberty. The experience of a hundred years has, I hope, brought them to a better sense

of their duty ; and having been so long sufferers, they will now be advocates for the liberty of mankind in general, not for that of a party.

And now, Sir, give me leave with you to address the rest of my brethren of the church of England, if you will still allow me to call them brethren ; and permit me to say a word or two, on the utility of your subscription. I have, for six years, officiated among you as a minister, and for the greatest part of that time esteemed myself happy in the care of a parish, where, according to my abilities, I endeavoured to preach the gospel of Jesus Christ. Having subscribed to, and believed your articles, my discourses were conformable to them ; and I might perhaps have gone on to the present day, had I not thought it my duty, to teach something more than the common topics of moral philosophy. For this purpose, I resolved to preach to my flock from the Bible alone, and to expound from the beginning, its doctrines in a regular plan. Accordingly I took up my Bible, and examined a certain portion of it for my Sunday's discourse. Before I had got through the Old Testament, I was astonished to find, that there was not the least hint of the Trinity in it ; and that the Unity of God was laid down in the most explicit terms. It would have been well for me, according to the prudential maxims of the world, that, in imitation of a certain bishop, I had then shut up my book, and left the settling of my faith to older heads. But I went on, and the farther I went, the less reason did I perceive for those notions in which I had been educated. I began then to doubt of the truth of many other points, to which I had subscribed ; but as I knew, that there were very ingenious writings on both sides of the question,

question, I resolved not to read any of them, but to depend solely on the scriptures for my opinions. The result was, that every day I became more uneasy in my station, and at last found myself unable to perform the duties of the church. In quitting the preferment I had, however, and my future expectations, I did not look upon myself as set free from my obligation to study religion, and to pursue truth, wherever she may be found. But as I have been misled by articles of human device, I shall for the future take great care not to set the traditions of men in competition with the pure word of God. From my view of the scriptures, it appears to me that there is one God, the creator and governor of the universe, the God and Father of our Lord Jesus Christ; that the hypothesis of two natures in Christ has no foundation in scripture, but arises solely from the endeavours of men to solve some apparent difficulties, which they could not do on any other supposition: that Jesus Christ was a man like ourselves, sin only excepted, through whom, by the free gift of God, those, who are obedient to his precepts, shall obtain everlasting life.*

Now

* As persons are frequently led away by names to which they affix very opprobrious ideas, and this abuse prevails no where more than in the University, I shall for the sake of the junior students just delineate the leading features of some sects now prevailing in the nation. By Unitarians I mean those who believe God to be one person, and all other persons and things to be his creatures: in opposition to trinitarians, who believe God to consist of three persons in one substance, and all creatures, persons, and things, to be their joint production. The different opinions concerning the nature of Christ may be briefly stated in the following manner, Either Christ pre-existed, or he did not. If he pre-existed, it must have been either as God, or as the creature of God: the former is the Athanasian, the latter the Arian opinion. If he did

Now I do not pretend to say, that your articles must be wrong, because I do not believe them; but this is certain, that they depend on the scriptures for their support: and it much behoves you to examine them now, lest you be misled by the mistaken notions of men, just emerging from a barbarous age. It is certain, that the composers of your articles had not the opportunities of studying the scriptures, which you have at present; that they were involved in prejudices, which their zeal for Christ was not able to counteract. They saw the folly of infallibility in the pope, or a council of catholic divines, but thought themselves sufficiently unbiaſſed, to draw up an infallible rule of action and faith from the scriptures. The consequence was, that they drew up thirty-nine articles, consisting of ten times that number of propositions, in which they expected all to unite. Uniformity of opinion was the end to be gained, by the imposition of this standard of faith. We have now had the experience of two hundred years, to teach us, that this uniformity is not to be gained by authority. Philosophy might have forewarned them, that, as their propositions were
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did not pre-exist, his existence must have commenced either naturally or supernaturally; that is, he must have been conceived by his mother in the ordinary manner, or in some extraordinary way, must have been the son of Joseph and Mary, or of Mary alone: the former as it was the opinion of some early christians, so it is also of some sensible and learned persons of our times: the latter is the general opinion prevailing among the Socinians. The author professes himself to be a Unitarian, distinguished from the Arians, by denying the pre-existence of Christ; and from the Socinians, by denying the propriety of addressing prayers to any but the one true God. The time, it is hoped, is not far distant when men will cease to be called by the names of Athanasius, Arius, or Socinus.

not capable of mathematical demonstration, it was, though not absolutely impossible, yet in the highest degree improbable, that any two persons should agree in opinion with respect to each article. At the present moment, I do not think that any two clergymen, though in what are called leading points they agree, would give similar expositions of the greater part of the articles. And, if they may differ in some, why may not two others differ in others. If I disbelieve the articles relating to the divinity of Jesus Christ, and agree to many of the others, why should I be thought worse of, than he who agrees to the divinity, and denies all the rest.

I am far from thinking uniformity in opinion, whether philosophical or religious, a desirable object. Our tempers and disposition, conversation, habit, and example, will and must have some influence on each mind; and we may be thankful to Providence, for the mode in which its decrees are conveyed to us, that those, which are absolutely necessary for our well-being here and hereafter, are clear and explicit; while other matters afford employment and rational amusement to an inquiring mind. Why should a man quarrel with me, because I do not think extension an essential property of matter? I will not quarrel with him about original sin. If I do not esteem the ceremony, used in most of the christian churches, the baptism* of the ancients, I shall not vilify one, who anoints a sick man with oil.

* Most of the christian churches sprinkle a little water on a child's face and call it baptism. I have no objection to the use of this term, but I contend that the words βαπτισμα, βαπτισμα, βαπτισμα, in the New Testament, mean a very different rite.

oil. The more we examine into these subjects, the less reason do we find for our rancorous disputes, and if we all made the terms in which we agree, the basis of union, there would be less difficulty in overcoming other obstacles. But you are resolved to have your articles. The power is in your hands, and therefore you may do as you please. Still hear the consequences. You do not gain any thing by them. Uniformity is a specious word, and every body knows it is only a word, for the essence is gone. All, who have no faith in Christ, will readily sign your articles, and a thousand more; those who have already signed them, cannot be restrained from examination. If you are persuaded, that the result of such an examination must be conviction of their truth, except in perverse minds, you give your protestant council, as great a degree of infallibility, as the catholic claimed; and you asperse the greatest characters this nation has produced, a NEWTON, a LOCKE, and a CLARKE. Read the History of the Reformation, see whether your reformers were such clear-sighted, impartial, learned men. If the belief of the articles depends on examination, and they are referred to the Bible, why cannot ye do, as our saviour and his apostles did, rest the whole of your faith on the scriptures alone. Your shackles are such, as neither can you, nor could your fathers bear. When every man has the liberty of expounding the scriptures, our understandings will be gradually enlightened, and our errors reformed; till then, you leave it to your adversaries, to take advantage of the weakness of your structure, and to alarm the inhabitants within: they finding no disposition in the surveyors of the building to inspect the works, will examine for themselves, and perceiving the timbers

bers gone, and the stones mouldering, will flee from it, and erect a more solid and durable habitation.

With the greatest respect for you and many other of my friends, who still remain in spiritual fetters, praying that you may all have courage to break them, and to use that liberty, by which Christ has made us free, I subscribe myself,

Sir,

Your's, very sincerely,

W. F R E N D.

APPENDIX,

A P P E N D I X.

C O N T A I N I N G

I. MR. FREND'S APPEAL TO THE VISITOR OF
THE COLLEGE, ON OCCASION OF HIS REMOVAL
BY THE MASTER FROM THE OFFICE OF
TUTOR.

II. THE MASTER'S ANSWER TO THE APPEAL.

III. HIS REPLY TO THE ANSWER.

A N D

IV. THE JUDGMENT OF THE VISITOR.

P R E F A C E

THE last resource of a person who deems himself injured is an appeal to the public, and the liberty of the press is at all times one of the greatest restraints on oppression. I do not publish this account of the proceedings, subsequent to the declaration of the master, by which I was robbed of an income of an hundred and fifty pounds a year, and deprived of an honourable employment, in order to excite the compassion of my countrymen, but to shew them, that being a determined enemy to ecclesiastical tyranny, I would not, for a moment, give way to arbitrary power, nor acknowledge a right in any man to prevent me from speaking my sentiments freely: a right which an Englishman claims, whether Jesus be or be not God, or even whether he be or be not the Messiah.

I think myself unjustly treated on two accounts; first, because the statutes of the college do not appear to me to give the master the power he claims; and secondly, because, if he had the power of dismissing me from my office, I had been guilty of no misconduct in that office, and the action

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which

which he has taken upon him to censure, does not lie within his province. In fact, every right of an Englishman has been violated in my person. I was never legally accused of any crime, much less legally convicted of it. Dr. Beadon took upon him to act at the same time as accuser and judge, and sentence was pronounced without even the formal requisition of a defence. From this sentence I appealed to the judgment of the visitor, and am not surprised at the result.

Is the religion of this country true, or is it false? If it is true, it wants no other support than its own intrinsic merit. If it is false, it must necessarily be supported by violence, robbery, and arbitrary power. I declared my disbelief of certain tenets adopted by the church of England, and was dispossessed of a civil employment. What shall we say? Is the church of England fearful of inquiry? What confidence then can she be supposed to have in the truth of her doctrine?

The sensible part of the clergy have long been ashamed of that farrago of nonsense the Athanasian creed, and seldom, if ever, read it in their churches. Dr. Beadon thought fit to leave out that part of my declaration, which related to an impudent clause in it. For what reason he best knows. Yet the disbelief of that creed renders an honest man as incapable of holding any preferment in the church, as the disbelief of the thirty-nine articles. I shall subjoin the part omitted, which the reader will be pleased to connect with No. vi. of the Master's Appendix to his Answer*.

“ And

* See an Address to conforming Arians, lately reprinted, and sold by the booksellers in Cambridge.

“ And as universal benevolence seems to me to
 “ be the striking character of the religion of
 “ Jesus Christ, I cannot conclude this declaration
 “ without expressing my abhorrence of a tenet
 “ inculcated in one part of the said service, by
 “ which every person differing in opinion, as to
 “ some obscure points of an obscure creed is
 “ doomed to everlasting perdition †.”

W. FRIEND.

† Preface to Thoughts on Subscription.

T H E

A P P E A L.

To the Honourable and Right Reverend JAMES
Lord Bishop of ELY, Visitor of Jesus College
in the University of Cambridge, the humble
Appeal of WILLIAM FREND, M.A. Fellow and
Tutor of the said College.

Sheweth,

THAT the greater part, if not all of the
members of the college in statu pupillari, were
at the time of their respective admissions as-
signed by the master or president, with the consent
either of the major part of the resident fellows,
or with that of the dean and lecturer for the time
being, to the government and instruction of the
said William Frend; and

That the master conceives himself to have the
power of removing a tutor, however statutably
appointed, at any time from his office, in virtue
of certain words taken from the 32d chapter of
the statutes, entitled, “De admissione commen-
salium sive perendinantium,” quoted by him for that
purpose; as appears from a paper affixed in dif-

ferent parts of the college by his order, a copy whereof is here underwritten; in which he assigns the Rev. Thomas Newton, M.A. tutor or curator in the room of the said William Friend, as well with respect to those, who already are members of the college, as to such as may hereafter be admitted, requiring them to receive him in that character under pain of expulsion.

Now, as this construction of the statute seems to be not only foreign to the words themselves, and to the title of the chapter from which they are taken; but is also attended with manifest inconvenience, that, as the power claimed by the master must, if allowed, belong also to the president or other representative of the master, the whole tuition of the college is thereby rendered liable to be altered as often as the master either leaves or returns to college; the appellant, in compliance with the direction of the statutes in such cases, humbly requests the judgment of your lordship, concerning the true meaning of the words quoted by the master:

Whether the power conveyed by them to the master, or in his absence to the president, of assigning a tutor to young persons admitted into the college, be limited to the time of their admission; or may, with respect to the same persons, be exercised, as often as the master or president shall think fit.

Jesus College,
Oct. 23, 1788.

W. FRIEND.

Copy

Copy of a Paper affixed by the Master's order in different parts of the college.

Coll. Jesh. Septbris. 27, 1788.

CUM per statuta hujus collegii provisum sit, “ quod si commensalis ad cominas admissus vigesimum annum non attigerit, habeat curatorem, virum discretum arbitrio magistri vel in ejus absentia præsentis eidem assignandum, qui moribus et gubernationi personæ præsit, et pro eodem in omnibus respondeat;” Ego Ricardus Beadon, hujus collegii magister, per præsentem notum facio omnibus, quorum interit, me assignasse viros discretos Joannem Plampin, A.M. et Thomam Newton, A.M. curatores, qui commensalium quorumcunque sive ad majores sive ad minores cominas in dicto collegio admissorum, moribus et gubernationi personæ præsent, et pro iisdem in omnibus respondeant: omnibusque simul hujus collegii commensalibus edico, ne a festo Sancti Michaelis proximè sequenti alium quemcunque curatorem, sive tutorem, sibi adhibeant, sub pœnâ amotionis.

R. BEADON, (L.S.) Mr.

Extract from the 32d chapter of the Statutes entitled, “ De admissione Commensalium sive perendinantium.”

“ PROVISIO semper, quod si commensalis ad cominas admissus, vigesimum annum non attigerit, habeat curatorem, virum discretum, arbitrio magistri vel in ejus absentia præsentis eidem assignandum,

nandum, qui moribus et gubernationi personæ præsit, et pro eodem secundum formam statutorum nostrorum in omnibus respondeat.”

Extract from the 37th chapter entitled, “De Statutis legendis.”

“STATUTA vero ista nostra accipi et interpretari volumus, quantum fieri potest, secundum grammaticalem sensum eorundum, quod si in iisdem dubium aliquod incurrat, aut emerferit, volumus pro dubio hujusmodi explicando et interpretando ad nos et successores nostros pro tempore existentes, recurrant; et hujusmodi dubii explicationem et interpretationem á nobis aut successoribus nostris factam, statuti vim et efficaciam obtinere volumus.”

T H E

M A S T E R ' s A N S W E R .

To the Honourable and Right Reverend JAMES Lord Bishop of ELY, Visitor of Jesus College in the University of Cambridge, the Answer of the Rev. RICHARD BEADON, Doctor of Divinity, Master of the said College, to the Appeal of WILLIAM FREND, Master of Arts, and Fellow of the same College.

May it please your Lordship;

THE point in dispute between the master and Mr. Frend is solely this ; Whether the master has a discretionary power of removing a tutor from his office, whenever the welfare of the college shall appear to him to require such removal ? This question, which cannot fairly be determined without an examination of all the different statutes of the college, in which the authority and powers of the master are mentioned, is stated by Mr. Frend, in his Appeal, to depend entirely upon the

the

the construction of "certain words" in one statute only; and the use which the master made of those words, in a public notification of his appointment of Mr. Newton to the office of tutor, is represented by Mr. Frend as declarative of the master's own opinion, that they contain the only grounds of his claim to the power in question. This however is by no means the case. The master founds his pretensions to this power on the authority of other statutes, as well as that of the 32d chapter; and humbly submits to your lordship's consideration and better judgment, both the grounds on which he asserts his claim to such a power, and the motives which induced him to exercise it in the present instance.

The words, concerning the true meaning of which Mr. Frend requests your lordship's judgment, are contained in a provision at the end of the thirty second chapter of the statutes: and in order to understand the full meaning of the provision, it will be necessary to take a short view of the whole statute*. It is entitled "*De admiffione commensalium five perendinantium.*" It sets out with empowering the master and major part of the fellows for the time being to receive into the college, over and above the members of the foundation, another class of students, to be called "*commensales,*" according to the number of vacant chambers, for which they were to pay a rent to the college, to be fixed by the master. It then proceeds, after another regulation which needs not be mentioned here, to order, that all and each of these commensales, whether admitted into "*maiores*" or "*minores cominas,*" shall pay a certain sum to the steward, according to their respective

* See Appendix, No. I.

spective ranks, towards the repair of the college-utenfils, over and above the price of their commons, and rent of their chambers ; and the better to secure the payment of such sum, a pecuniary mulct is also imposed on the neglect to pay it after a certain number of days. And, lastly, if any “ *commensalis*,” when admitted into commons, “ *vigesimum annum non attigerit*,” that is, if he is not *fui juris*, the statute provides that he shall have “ *curatorem, virum discretum, arbitrio magistri vel in ejus absentia præsentis assignandum, qui moribus et gubernationi personæ præsit, et pro eodem secundum formam statutorum in omnibus respondeat*.”

From this view of the whole statute, the design of the provision in the latter part of it appears evidently to be twofold ; in the first place, to secure to these younger students that care of their persons and morals, which they stand so much in need of ; and secondly, as they were to live entirely at their own expence, without any support from the college-funds, to secure to the college the payment of the several sums, to which they are made liable by this statute ; namely, for the rent of their chambers, for their commons, and for the use of the college-utenfils. For the better effecting both these purposes, it is imposed as a duty on the master to assign to every “ *commensalis*,” as soon as he is admitted into commons, a proper curator ; whose business it is, at the same time, to superintend the conduct of the student, and to be his sponsor to the college for the regular discharge of all the payments, to which he is liable by the statute. Now it cannot be supposed, that the author of this statute should take so much care both of the student and of the college at the time of admission, and intend to leave
both

both of them afterwards to the mercy of the curator. As long as the student continues in statu pupillari, so long the exigency of the statute requires, that he should have "curatorem, virum discretum," for the benefit and security both of himself and of the college. But the master may easily be mistaken in his first judgment; the curator may become negligent in his care of the student, as tutor, or in his payments to the college, as sponsor, or even incapable of discharging his duty in both capacities. In any of these cases, to whom is the student or the college to look for redress, except to the master; to whose discretion the appointment of the curator is given by the statute, and who is therefore constituted the sole judge of his fitness or unfitness for the office. It is not pretended, that any other person, or persons have a statutable right to interfere in this business; and therefore if the master has no controul over him, the curator may be either wilfully negligent, or accidentally incapable of the duties of his office, and yet both the student and the college will be left without any remedy.

But the power contended for by the master, thus derived by necessary inference from the words and purport of the thirty-second chapter of the statutes, seems also to be clearly given to him by other statutes. In the third chapter* entitled, "Forma juramenti magistri," part of the oath prescribed to be taken by the master before his induction is, "delinquentes quoscunque juxta statutorum exigentiam puniam et corrigam, ac sic puniri et corrigi faciam." In the fourth chapter† of the statutes, entitled "De curâ magistri," the master is invested with the power of

* See Appendix, No. II.

† See Appendix, No. III.

of doing, what he had before engaged to do under the obligation of an oath. For, immediately after his induction into the office of master, the statute gives him “ regimen et gubernationem omnium sociorum scholarum discipulorum puerorum officiariorum ministrorum servientium, nec non commensalium, si qui fuerint, et aliorum quorumcunque infra collegium manentiam aut moram trahentium, eorum denique omnium et singulorum, excessuum et delictorum reformationem et punitionem juxta et secundum formam statutorum.” The general superintendancy and government of the whole college here given to the master, is for the most part directed and limited in the subsequent statutes by a description both of the offence, and of the punishment to be inflicted. In some instances the offence only is mentioned, and the punishment expressly left to the discretion of the master; as in the thirty-fourth chapter of the statutes*, entitled, “ De damnis illatis per commensales reficiendis.” But many cases may, and necessarily will arise, which require punishment and correction, where the statutes are totally silent with respect both to the offence and the punishment. Here also, as well as in the former instances, the master’s duty is clear and explicit, “ delinquentes quoscunque juxta statutorum exigentiam puniam et corrigam;” and what the statute makes it his duty to do, he must have the right and power of doing. To apply this to the case now before your lordship. The only place in the statutes, where the office of curator, or tutor is mentioned, is in the thirty-second chapter†, entitled, “ De admissione commensalium sive prebendinantium;” and there, as we have seen before,

nothing

* See Appendix, No. IV. † See Appendix, No. I.

nothing is prescribed, or said, concerning him, except the manner of his appointment, which is to be “*arbitrio magistri*,” and the nature of his office, which is “*moribus et gubernationi personæ (commensalis) præesse, et pro eodem secundum formam statutorum in omnibus respondere.*” A statute, which creates an office of so much importance to the welfare both of the younger students and of the college, must necessarily be supposed to intend, that the duties of it shall be well and regularly performed; and it is evidently the duty of the master, who has “*regimen et gubernationem omnium officiariorum*” to take care that they are so performed. In case of any misconduct in the discharge of the office, it is evidently the master’s duty also, according to his oath, to punish and correct it; and if such misconduct, and the punishment to be inflicted were mentioned in the statute, the master would be bound to follow the direction of the statute, and to punish “*juxta et secundum formam statuti.*” But the silence of the statute in these respects does not dispense with the master’s general duty; he is still bound by his oath “*delinquentes quoscunque juxta statutorum exigentiam punire et corrigere;*” and having no other rule prescribed by the statute for his direction therein, he must be governed by his own discretion in inflicting such punishment, as the exigency of the case may appear to him to require.

But Mr. Frend contends, that the allowance of such a power to the master will be attended with great inconvenience. All discretionary power is certainly liable to be abused; but a possible inconvenience attending the exercise of any right, will not conclude against the existence of the right itself. And with respect to the particular inconvenience

venience stated by Mr. Frend in his Appeal, namely, " that the whole tuition of the college is thereby rendered liable to be altered as often as the master either leaves or returns to college;" this inconvenience, how manifest or great soever it may be supposed to be, cannot in any view of it be thought equal to the inconvenience, which would necessarily arise from an office of so much importance and responsibility, as that of tutor, being left without any controul whatsoever. But, in fact, the inconvenience stated is merely imaginary; as it is allowed on all hands that the master, who claims the power in question, (and therefore *à fortiori* the president or other representative of the master in his absence,) is accountable to the visitor for his conduct in the exercise of this, as well as of every other right belonging to him.

To these arguments in support of his power, the master has only to subjoin the reasons, which induced him to exert it in removing Mr. Frend from the office of tutor. By the seventeenth chapter of the statutes *, entitled " De divinis officiis," all the members of the college are required to attend the college chapel at stated times, and to join the celebration of divine service " juxta usum ecclesiæ Anglicanæ." If it should be said, that the church of England is a very different thing now from what it was before the Reformation, when Bishop West gave us his statutes; it will be sufficient to observe, in answer to this objection, that Queen Elizabeth's visitors certainly revised and enlarged, and thereby gave a new and additional authority to Bishop West's Statutes; and

* See Appendix, No. V.

and therefore the words “ *divina officia juxta usum ecclesiæ Anglicanæ*,” in this statute, must now be understood to enjoin the use of the liturgy of the church of England, as it was then by law established, which does not materially differ, either in doctrine or practice, from the present established liturgy. In a seminary, thus evidently designed for the education of members of the church of England only, as the master could not conscientiously commit the younger students, at the time of their admission, to the tuition and government of a person, whom he knew to be disaffected to the church of England ; so he thought it his duty likewise to remove Mr. Frend from the tuition of such as had been already admitted under him : Mr. Frend having professed, and publicly “ declared *” his disbelief of many of the articles and doctrines of the church of England ; and that there are many parts of its liturgy, to which he has insuperable objections, particularly to the prayers addressed to Jesus Christ, and to the Trinity.

*Jesus College,
Nov. 25, 1788.*

R. BEADON.

* See Appendix, No. VI.

A P P E N D I X.

N U M B E R I.

Extract from the thirty-second chapter of the Statutes, entitled, “ De admissione Commensalium sive perendinantium.”

“ITEM statuiamus ordinamus et volumus quod licebit magistro collegii nostri pro tempore existenti et majori parti sociorum commensales sive perendinantes bonorum morum honestæ conversationis ac studere volentes pro numero camerarum vacantium in collegium nostrum recipere et commensales facere, ac magister collegii cameras vacantes quas socii habere non maluerunt sub pensionibus prout melius pro utilitate collegii poterit eis locare. Quibus ad majores sive superiores communas semel admissis ad inferiores sive minores aut sizationem non licebit descendere sine licentiâ magistri vel in ejus absentia præsentis ex rationabili causâ per eum approbandâ prius petitâ et obtentâ. Quos omnes et singulos ad superiores sive majores communas ut præfertur admissos ad reparationem utensilium collegii fenescallo pro tempore existenti quinque solidos solvere volumus, et commensales ad minores communas ut præfertur admissos duodecim denarios præter et ultra communas et camerarum suarum pensiones, quas summas eidem fenescallo eorum quemlibet solvere volumus sub pœnâ sexdecim denariorum collegio applicandorum non solventi per quindenam totiens quotiens infligenda. Volumus insuper quod omnes et singuli commensales ad majores communas admissi qualibet quindena pro communis suis hujusmodi solvant seu solvi faciant sub

E

simili

simili pœnâ sexdecim denariorum in utilitatem collegii convertendorum non solventi per sex dies post lapsum termini prædicti totiens quotiens infligenda. Provisio semper quod si commensalis ad communas admissus vigesimum annum non attigerit, habeat curatorem virum discretum arbitrio magistri vel in ejus absentia præsentis assignandum, qui moribus et gubernationi personæ præsit, et pro eodem secundum formam statutorum nostrorum in omnibus respondeat.”

No. II.

Extract from the third chapter of the Statutes, entitled, “ *Forma juramenti Magistri.*”

“ *EGO A.B. in magistrum hujus collegii electus et institutus ero obediens in omnibus licitis et honestis Reverendo in Christo patri et domino Domino N. miseratione divinâ Eliensi episcopo et successoribus suis rite intrantibus, omnesque ordinationes et statuta hujus collegii quatenus me concernunt aut concernere poterunt fideliter observabo, et ab aliis dicti collegii sociis pueris atque aliis studentibus quatenus eos concernunt quantum in me est observari faciam—delinquentes quoscunque personarum vel patriæ acceptatione omnique amore invidia odio et favore quantum humana fragilitas finit postpositis et prætermisissis juxta statutorum exigentiam puniam et corrigam ac sic puniri et corrigi faciam. Hæc omnia observabo sicut me Deus adjuvet et hæc sancta Dei evangelia.*”

No. III.

No. III.

Extract from the fourth chapter of the Statutes,
entitled, "De curâ Magistri."

"ITEM statuimus ordinamus et volumus quod posteaquam magister collegii nostri prædicti iuramentum hujusmodi præstiterit corporale ex tunc et non aliter immediate in realem et corporalem possessionem per præsidentem pro tempore existentem ut præfertur inducatur, et deinde administrationem omnium et singulorum bonorum spiritualium et temporalium ac etiam regimen et gubernationem omnium sociorum scholarium discipulorum puerorum officiariorum ministrorum fervientium necnon commensalium, si qui fuerint, et aliorum quorumcunque infra collegium nostrum prædictum manentium aut moram trahentium, eorum denique omnium et singulorum excessuum et delictorum reformationem et punitionem juxta et secundum formam statutorum habeat et obtineat."

No. IV.

Extract from the thirty-fourth chapter of the Statutes, entitled, "De damnis illatis per commensales reficiendis."

"QUOD si contumaciter sive obstinate sic delinquens facere recusaverit, præter et ultra poenam prædictam arbitrio magistri vel in ejus absentia præsidentis pro tempore existentis à dicto collegio nostro removeatur aut alio modo acrius puniatur."

No. V.

Extract from the seventeenth chapter of the Statutes, entitled, "De divinis Officiis."

"STATUIMUS quod singulis diebus dominicis et festivis in capellâ dicti collegii cantentur ab omnibus sociis scholaribus studentibus et pueris collegii in villâ præsentibus matutinæ, synaxis, primæ vespæræ et secundæ, cæteraque divina officia juxta usum Ecclesiæ Anglicanæ.

"Volumus insuper quod singulis diebus profestis horâ quintâ post meridiem omnes et singuli pueri de collegio nostro, cessante legitimâ causâ per magistrum vel præsentem approbandâ, in dictâ capellâ conveniantur ac symbolum apostolorum decem præcepta cum dominicâ oratione recitent.—Nec non quolibet die Veneris cujuslibet Septimanæ horâ octavâ simili modo conveniant et ibidem litaniam cum notâ decantent."

No. VI.

Extract from a printed pamphlet, entitled, "Thoughts on Subscription to Religious Tests, particularly that required by the University of Cambridge, of candidates for the degree of Bachelor of Arts, in a letter to the Rev. H. W. Coulthurst, B.D. Fellow of Sidney College, and Member of the Caput Senatus. By William Friend, M.A. Fellow of Jesus College, Cambridge. St. Ives, printed by T. Bloom. 1788."

"WHEREAS I, WILLIAM FRIEND, did at several times, within the years 1780 and 1784,
subscribe

subscribe to the articles and doctrines of the church of England, as by law established, being now convinced, by an attentive study of the holy scriptures, that many things, contained in the said articles, have no foundation whatever in the holy scriptures, I do hereby declare my disbelief of the said articles and doctrines, particularly of the second, the fifth, and the eighth articles of that summary of faith, commonly called the thirty-nine articles : and whereas from November 1780 till June 1787, I did officiate as a minister of the church of England, I do moreover declare, that there are many parts of its liturgy, to which I have insuperable objections, particularly to the prayers addressed to Jesus Christ, and to the Trinity.”



T H E

R E P L Y.

To the Honourable and Right Reverend JAMES Lord Bishop of ELY, Visitor of Jesus College in the University of Cambridge, the Reply of WILLIAM FREND, M.A. Fellow and Tutor of the said College, to the Answer of the Reverend RICHARD BEADON, Doctor of Divinity, and Master of the same College.

May it please your Lordship,

I LATELY submitted to your lordship's determination the following question; "Whether the power given by the words of the statute to the master, or in his absence to the president, of assigning a tutor to young persons admitted into the college, be limited to the time of their admission; or may, with respect to the same persons, be exercised, as often as the master or president shall think fit?" at the same time humbly suggesting my reasons for thinking, that the

power conveyed by them to the master was limited to the time of admission. These reasons were, first, the words themselves ; “ *Provisio semper quod si commensalis ad cominas admissus vigesimum annum non attigerit, habeat curatorem virum discretum, arbitrio magistri vel in ejus absentia præsentis assignandum, qui moribus et gubernationi personæ præsit, et pro eodem secundum formam statutorum in omnibus respondeat :*” secondly, the title of the chapter from whence they are taken ; “ *De admissione commensalium sive perendinantium :*” thirdly, the inconvenience likely to arise from the exercise of the same power, by the master and president, or other representative of the master, who might be disposed to think differently of the fitness or unfitness of the same person, and thereby the tuition become liable to sudden and frequent changes.

This question has been since stated to your lordship, by the master more generally in the following terms ; “ *Whether the master has a discretionary power of removing a tutor from his office, whenever the welfare of the college shall appear to him to require such removal ?*” But, as the point in dispute between the master and me concerns the power of the master, and not the rule by which the exercise of it should be directed, the limitation added by him seems to be unnecessary. And if a discretionary power should be allowed by your lordship, some future master or president may perhaps think themselves justified in removing a tutor, should such removal appear to him only consistent with the welfare of the college, though he could not pretend, that the welfare of the college required it.

Although the master, in the paper containing the nomination of Mr. Newton to the office of
tutor,

tutor, which by his order was affixed in different parts of the college, referred only to those words in the statutes, concerning the meaning of which your lordship's judgment hath been requested ; he now founds his pretensions on all those statutes, in which the authority and powers of the master are mentioned ; as well as on the words first alledged by him. In what manner and with what propriety I shall proceed to shew ; after observing only, that the master appears to be mistaken in asserting, that the question was stated by me “ to depend entirely on the construction of the words quoted by him in the paper before-mentioned ; and that I had represented it as his opinion, that “ they contained the only ground of his claim to the power in question.” The words in the Appeal are, “ the master conceives himself to have the power of removing a tutor, however statutably appointed, in virtue of certain words taken from the 32d chapter of the statutes, entitled, “ *De admiffione commensalium five perendinantium*, quoted by him for that purpose.” It is not said, in virtue of those words only. But, as the words quoted by him were the only ground, on which the claim was then built, they formed at that time the only one, that I could either attempt to invalidate myself, or submit to the judgment of your lordship.

The manner in which the master argues in support of the power claimed by him (thereby acknowledging it not to be expressly given to him) is by inference from the reason of the provision at the end of the 32d chapter ; the design of which, as it is justly stated by the master, is, in the first place, to “ secure to the younger students, that care of their persons and morals, which they stand so much in need of ; and, in the second,

to

to secure to the college the payment of several sums, to which they are made liable by statute." But it cannot, he says, " be supposed, that the author of the statute should take so much care of the student and college at the time of admission, and intend to leave both of them afterwards to the mercy of the curator;" neither is the supposition of such an intention at all consequent upon the denial of the master's power. Should the master be mistaken in his first judgment, and the curator become negligent in the care of the student as tutor, or in his payments to the college as sponsor, or even incapable of discharging his duty in both capacities; application may be made in the first place to the visitor of the college, in whom is vested every power necessary to its welfare in every instance, over and above such as are expressly given to the master or any other officer, and to whom all are accountable for the exercise of the power they possess. And therefore, though it is not pretended, that any other person or persons being members of the college have a statutable right to interfere in this business, and though the master should have no controul over the curator, he cannot be either wilfully negligent or accidentally incapable of the duties of his office, and yet the college and the student be left without remedy.

In case of negligence or incapacity the master asks, to whom is the student or college to apply for redress, except to the master; to whose discretion the appointment of the curator is given by the statute, and who is therefore constituted the sole judge of his fitness or unfitness for the office? and the answer hath been already given to your lordship, as visitor of the college. And in support of that answer, it may be observed,

served, that a discretionary power of appointing an office in any society by no means necessarily involves in it the power of removing him. The King is made by law the sole judge of the fitness or unfitness of the persons appointed to preside in the principal courts of the kingdom; but he has not the power of removing them at discretion from their office, though the welfare of the country should appear to him to require such removal.

But the power contended for by the master and derived, as he supposes, by necessary inference from the words and purport (or rather reason and purport) of the provision in the 32d chapter of the statute, seems also, he says, to be clearly given to him by other statutes. All that is really given to him by those statutes is the general superintendence and government of the whole college, with a power of punishing the excesses and irregularities of its members, under the obligation of a particular oath, taken by him before his induction. And as the power of removing a tutor from his office was contended for by him under the former head, in the way of inference from the reason and design of the provision in the 32d chapter of the statutes, so it can only be now contended for by him, in the way of inference from the general duty imposed on him by the statutes, to which he refers; and that only by supposing that the power of punishing and correcting given to him is a power of punishing and correcting, where the statutes are totally silent, with respect both to the offence and the punishment; the proof of which depends entirely on a distinction made between a power of punishing *secundum formam statutorum*, and the power of punishing *juxta exigentiam eorumdem*. **A**
distinction

distinction plainly without a difference. The meaning of the words *secundum formam statutorum* is not questioned, and the meaning of the terms *juxta exigentiam statutorum*, when applied to the power of punishing, can only mean a power of inflicting such punishments, as the statutes demand, and consequently on such offences as are specified in them. On any other supposition there would be no correspondence between the form of the oath taken by the master, and the duty imposed which it is designed to enforce. The latter is described to be the duty of punishing *secundum formam statutorum*, and the former obliges him to the performance of that duty, by punishing *juxta exigentiam statutorum*. Had the statutes any where given to the master the power of punishing *juxta exigentiam rei*, or according to the exigency of the case, the power contended for might perhaps have been allowed to be fairly inferred from it.

But that no such power really belongs to the master, may be briefly demonstrated in the following manner. The master's power of punishing a fellow of the college must be limited by the obligation of the fellow to submit to it; but the obligation of a fellow to submit to any punishment whatever arises from the oath, taken by him before his admission, which requires him, to submit only to such punishments, as the statutes prescribe. The words of the oath referred to are, "*Singula statuta et ordinationes hujus collegii absque omni cavillatione aut malâ vel sinistrâ interpretatione, quatenus ipsa me concernunt, inviolabiliter tenebo et obiervabo, et, quantum in me erit, ab aliis teneri et observari faciam; alioquin pœnas in non observantes et non parentes per dictas ordinationes, et statuta inflictas et ordi-*

natas.

natas, iudicio magistris, et in ejus absentia iudicio presidentis, juxta eorundem statutorum tenorem infligendas, humiliter subibo.”

And, as the master seems to derive his power of removing a tutor, as well from his having regimen et gubernationem omnium sociorum, etc. as from his having singulorum excessuum et delictorum reformationem et punitionem, it is necessary to observe to your lordship, that the statutes are made the rule of governing, as well as of punishing, as appears from the description given in them of the office of president; who, when chosen to supply the place of the master during his absence, is directed to govern secundum formam statutorum. Stat. cap. 16.

Whatever the statutes make it the master's duty to do, he must unquestionably have the right and power of doing: but then on the other hand a right or power thus derived must be of the same nature and extent with the duty, from which it is deduced: and therefore a power of governing or punishing at discretion, can never spring from the duty to govern and punish according to a prescribed rule, or in the language of the statutes secundum formam vel exigentiam statutorum. If therefore the only place in the statutes, where the office of curator or tutor is mentioned, is in the 32d chapter, entitled, “ de admissione commentariorum sive perendinantium,” and there is nothing prescribed or said concerning him, except the manner of his appointment, and the nature of his office; and it be also allowed that a statute, which creates an office of so much importance to the welfare of the younger students and of the college, must necessarily be supposed to intend, that the duties of it shall be well and regularly performed, it does not follow from its being the duty

duty of the master, to govern the college and punish the transgressors of its statutes, in the particular manner they prescribe, that, in the case of misconduct or accidental incapacity in the tutor, it is the master's duty to interfere, or that he has the power of interfering in any other manner, than by applying to the visitor for redress.

The master supposes me to contend, that the allowance of such a power to him will be attended with great inconvenience; and in answer to this supposed objection, he observes, that all discretionary power is certainly liable to be abused; and that a possible inconvenience, attending the exercise of any right, will not conclude against the existence of the right itself. This is very true; but it is as true, that the particular inconvenience, stated by me in the Appeal, was not such, as might arise from the accidental abuse of power in the master's hands, but from the same power being given to the president or other representative of the master, who might be disposed to think differently of the fitness or unfitness of the same person for the office of tutor; and from the tuition of the college being thereby rendered liable to be altered, as often as the master either left or returned to college. Whether this inconvenience was likely to be greater or less, than that which would necessarily arise from an office of so much importance and responsibility, as that of tutor, being left without any controul whatsoever, I was under no necessity of enquiring; for in fact the latter inconvenience is merely imaginary, as it must be allowed by all, and as it hath already been allowed by me, that, if the master has not the power in question, the tutor is accountable in the first instance to the visitor for his conduct in that, as well as in every other office, to which
he

he may be appointed, the immediate controul of which is not expressly given to the master or other persons in the college.

Thus have I endeavoured to refute the arguments, brought by the master in support of the power he claims, in a manner, I hope, respectful to him, and at the same time satisfactory to your lordship. On that supposition it is become unnecessary for me, to examine the particular reasons, which induced him to exert the power he supposes to belong to him, in removing me from the office of tutor: as no reasons whatever for the exercise of a power, if it be not previously possessed, are sufficient to confer it. But, had the master fully established his right to the power in question, what connection is there between the power claimed, and the reasons assigned for the exercise of it. The power, claimed by the master, is that of removing a tutor from his office, whenever the welfare of the college shall appear to him to require such removal, on account of wilful negligence, any gross misconduct, or an utter incapacity of discharging the duties of it. And the reasons assigned for the removal of me from the office, are my disbelief of many of the articles and doctrines of the church; and objections to those parts of its liturgy, in which prayers are addressed to Jesus Christ and the Trinity. The office of tutor, as described by the master agreeably to the statute, is to take care of the persons and morals of the younger students, and to make such payments on their account, as may occasionally become due to the college. The direction of their faith or worship is not pretended to make a part of it; that object is supposed to be sufficiently secured by their daily attendance on divine service in the chapel; and so far as such attend-

ance

ance is enforced by the statute, the college may undoubtedly be considered, as a seminary designed for the education of the members of the church of England only.

I would now ask, what proof not of wilful negligence or misconduct, no charge of either being alledged, but what proof of incapacity for such an office can arise from any opinions, however inconsistent they may be with some of those, that make a part of the established religion? Cannot the same love or desire of learning and knowledge be excited and encouraged in the minds of young students, the same care taken of their persons and morals, the same lessons of prudence, temperance, frugality, sobriety, industry, submission to their superiors, conformity with the statutes of the college, of piety to God and benevolence towards men, be inculcated by a unitarian as well as by a trinitarian christian; by him who believes God to be one person only, as by him who believes God to be three persons; by a disciple of Arius or Socinus, as well as by a follower of Athanasius; by one, who worships God and glories in Jesus Christ, as his saviour and redeemer, as by him, who addresses the same worship to both; or can a less regular discharge of the other duties of the office be reasonably expected from one than from the other?

But I forbear to enter farther into the subject, and humbly submit to your lordship's judgment, what I have already suggested, not doubting either of your candid acceptance of it, or impartial and equitable decision of the point in dispute between the master and me.

*Jesus College,
Dec. 15, 1788.*

W. F R E N D.

T H E

D E C R E E.

We, JAMES, by Divine permission, Bishop of ELY,
to the Reverend the Master and Fellows of St.
Rhadagunda, or Jesus College, in the University
of Cambridge, Greeting.

WHEREAS a certain business of Appeal,
or complaint, dated October twenty-third, 1788,
has been preferred to us, stating and complaining,
that by a certain notice in writing, dated September
twenty-seventh, 1788, under the hand and
seal of the Rev. Richard Beadon, Master, and af-
fixed by his order on different parts of the said
college, wherein he the said master has appointed
the within named John Plampin, A.M. and
Thomas Newton, A.M. to have the sole care and
tuition of all the commoners who either are, or
hereafter may be admitted into the said college
from the feast of St. Michael then next ensuing;
and forbidding such commoners to put themselves
under the tuition of any others than those so appointed

F

under

under pain of expulsion; whereby he the said William Frend is removed from his said office of tutor, to which he had been heretofore statutably appointed; and therefore praying that, We, as the lawful visitor and interpreter of the statutes would take his case into consideration, and give our judgment, “ Whether the power conveyed by
 “ them to the master, or in his absence to the
 “ president, of assigning a tutor to young persons
 “ admitted into the college be limited to the
 “ time of their admission; or may with respect
 “ to the same persons be exercised as often as the
 “ master or president shall think fit.”

Now know ye, that We, having duly weighed and considered the whole of your statutes in any wise concerning the authority of the master; Do by these presents pronounce, decree, and declare,

THAT the power of the said master, or in his absence, of the president, to assign a tutor to young persons admitted into the college, is not limited to the time of their admission; but may, with respect to the same persons, be exercised as often as the said master, or president shall think fit.

Ely,
 December 29th, 1788,

JAMES ELY.

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PEACE AND UNION

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OF

REPUBLICANS

AND

ANTI-REPUBLICANS.

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FELLOW OF JESUS COLLEGE, CAMBRIDGE.

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INTRODUCTION.

FOR writing this book, and publishing it within the university, the author was summoned to appear in the vice-chancellor's court, on a charge, that in it " religion, as established by publick authority within this realm, and also all ecclesiastical ranks and dignities, are impugned." The plan was formed by a cabal, consisting of twenty-seven masters of arts and doctours, who met at the house of the judge, and appointed a committee of five persons, to carry on in their names the prosecution. When the judge and the prosecutors are of the same party, the result of a legal process is easily divined. Eight days were consumed on this dispute *de lana caprina*, and in bringing the defendant to his sentence. On the seventh, the judge put into the authour's hand an unintelligible paper, which he was ordered to sign; and on his refusal, on the eighth day, to comply with such a request, sentence was passed, namely, " that he is banished from the university."

The law, on which this sentence is supposed to be founded, was made in the reign of queen Elizabeth, and there is no instance upon record of a person being punished under it, for merely writing or publishing a book. The passages, which have offended the twenty-seven, are marked by single inverted commas; but, to suit the purposes of the prosecutors, they found it necessary to garble them, and to omit and insert at pleasure.

The full account of the proceedings in the university will be submitted by the authour to the publick; from which it will appear clearly, that there is no such thing as an obsolete law to men, who have, or fancy they have, power in their hands, and that the liberty of the press is, in these times, in very imminent danger.

PEACE AND UNION.

THE royal proclamations, and the Introduction.
number of associated bodies on
various pretexts, in different parts of
the kingdom, are a sufficient proof
that the minds of men are at present
greatly agitated; and that the utmost
vigour of government, aided by the
exertions of every lover of his coun-
try, is necessary to preserve us from
falling into all the horrors attend-
ant on civil commotions. Having
been warned of our danger, it be-
comes us to consider by what means
we may escape the impending evil:
and no one should take a decisive
part, without weighing fully and
impartially the consequences of his
conduct. The assassinations, murders,
massacres, burning of houses, plun-
dering

dering of property, open violations of justice, which have marked the progress of the French revolution, must stagger the boldest republican in his wishes to overthrow any constitution: and, on the other hand, he must be a weak or a wicked man, who, lost in admiration of the beauties of a voluptuous and effeminate court, forgets the miseries of the poor subjects, whose bodies were bowed down to the grindstone for its support, and brands, with every mark of aristocratic insolence, the efforts of those patriots, who put an end to the despotism of the antient government. It is an awful example, which providence holds out to an astonished world; and happy will that nation be, which derives from it lessons of wisdom. Surely there cannot be a dissentient voice on this opinion; and no blame can that writer incur, who calls on the contending parties in our own country, to make a proper use of the divine judgements, and, instead of exasperating each other by useless invectives, to unite cordially in their endeavours to promote the common good, and to remove those grievances,

if

if any such there be, which occasion the present discontent.

If the dispute between the contending parties were solely this, whether the present government should be overthrown or not, the matter might be brought to a speedy issue. It would be urged on the one side, that the government has, for these hundred years last past, been acknowledged as the best in Europe, and unless a much better is pointed out to us, it will be unwise in the extreme to destroy a system, under which we have experienced so much publick and private happiness. The advocates for a republick may answer, that the government, among many bad ones, was really the best, but the expences of it were enormous; a thousand millions of money have been drawn from the subjects, which, had they been expended on the country, would have converted it into a paradise, and we have now before us the instances of America and France, which, on the ruins of their antient forms, have erected much nobler edifices. Let us see, whether a reasonable and moderate man may not be able to bring

Governments of America and France no examples for England.

these parties nearer to each other. The governments of the rest of Europe are in general supposed by all Englishmen to be much worse than their own. In common with them ours took its origin from the feudal system; but, from a variety of causes, most of the evils attendant on that system, which retained their force on the continent, have been, in our country, gradually abolished. That the expences of government have been enormous must be confessed by all parties, but this is not so much owing to the form of our constitution, as to the wretched plan, introduced in the last century, of anticipating in one the revenues of the succeeding years. Let us cast a veil over this failing of our common ancestors, and endeavour, that posterity shall have no reason to reproach us for following, with open eyes, so shameful an example. The present situation of France forbids us to consider, as yet, its constitution as worthy of imitation. It has not received the sanction of experience, and we must wait till the wretched despots, who, with unparalleled insolence, dared to interrupt

interrupt its course, consent to leave a nation in possession of the undoubted right to form its own internal government. Much less can America be urged as an example for us: our customs, laws and situation have inured us to habits unknown to the new world, and a sudden change from our form to theirs might be as prejudicial to the happiness of this country, as the imposition of our constitution might be to the inhabitants of America. Besides, if instead of the constitutions of France and America, the most perfect system that human ingenuity can devise, should be presented to us, it does by no means follow, that we should be justifiable in forcing the acceptance of it on our fellow countrymen.

Every change is attended with danger, and none should be adopted where the individuals injured by it are very numerous, in proportion to those who are benefited. The happiness of this generation is to be taken into the estimate, and it is not sufficient to assure us, that the prospects of a future race will be improved by our schemes. Where is the

Constitution to be amended, not every thousand.

the man, who can look so far forward into futurity, as to convince us, that our successors might not, from a different concatenation of circumstances, receive far greater blessings than we can bestow on them by the ruin of ourselves? As therefore the overthrow of our constitution, with or without the introduction of the most perfect system, could not be compassed without injuring a vast number of our fellow creatures, it should seem, that the contending parties might accede nearer to each other, if it could be proved, that our government is susceptible of improvement, and that various changes might be introduced for the benefit of the community at large, without injuring a single individual. If this should appear to be the case, we may, consistently with our duty to ourselves and posterity, take the proper steps for meliorating our condition, and leave, to future generations, the care of bringing government to the utmost point of perfection.

Parliamentary
reform.

I. There is no subject on which
the contending parties are so much
at

at variance, as on that of parliamentary reform. On the one hand it is asserted, that the constitution, as settled at the revolution, must remain inviolate ; on the other, that the corruptions of government render a reform in the representation of the people, and the duration of parliaments absolutely necessary. Reform is a very vague word, and it is too often made either a term of reproach or commendation, as it suits the interest of the speaker. The true sense of the word implies, that the things to be reformed had been previously in a better state ; and that the intention of the reformer is to bring them to their original destination. Let us then divide our disputed topick into its two component parts, a reform of the duration of parliaments, and the representation of the people, and, considering each separately, see whether we may not, on some points, bring the contending parties to an agreement.

1. On the duration of parliaments. Duration of the present parliament.
 One party is for shortening this duration, and reducing it to a period, on which there is a variety of opinion.

nions; some being for triennial, some for biennial, and others for annual parliaments. Here we find a common point of union, for the other contending party declares its attachment to the government founded at the revolution, in which triennial parliaments are a considerable feature. We may say then to the advocates for shortening the duration of parliaments, agree that three years shall be the period, and the other contending party must, unless it hath lost every sentiment of propriety, concur with you in promoting so salutary a measure. If it doth not, the publick must see clearly, that its reverence for the constitution founded at the revolution is merely a pretence, to gain over to its side the favour of a deluded populace.

Represent-
ation.

2. On a reform of the representation of the people. The most clamorous person for this species of reform, might be staggered with a simple question. Have the people of England been ever so well represented as at the present moment?

Increase of
votes in
boroughs;

The number of votes in several boroughs has been considerably diminished,

nished, in others much enlarged, since the charters were first given to them: but it is not improbable that the number on the whole has been increased. In counties the qualification for a vote is a freehold worth forty shillings a year; and, if we reflect on the increase of riches in this country within the last hundred years, we cannot hesitate to affirm, that the number of freeholders must have been considerably enlarged. If therefore the mere increase of the number of voters were an object to one of our contending parties, we might tell them, that time was gradually removing their complaints: but a wise and temperate man would not give such an answer, when he considered, that time was also increasing some complaints, and that government is properly called on to rectify the abuses prevailing in several boroughs.

In the course of not many years must the electors of one place grapple in the waves for their town, and at present a septennial consequence is given to a heap of ruins. This is a real evil, and ought to be redressed,

Evil consequence of the decay of boroughs.

C

and

and it must be redressed, as soon as men turn from the clamorous loquacity of pretended oratours and politicians to the sober dictates of common sense. The severest sarcasm against the House of Commons is to be found in the writings of a parliamentary declaimer, distinguished by his pursuits of reform even to the privacies of his sovereign, and the remote corners of the east, while he remains a declared enemy to the word, when it comes home to himself and his own connections. “ The House of Commons,” says this writer, “ is within itself a much more subtle and artful combination of parts and powers, than people are generally aware of. What knits it to the other members of the constitution, what fits it to be at once the great support and the great controul of government, what makes it of such admirable service to that monarchy, which, if it limits, it secures and strengthens, would require a long discourse belonging to the leisure of a contemplative man, not to one whose duty it is to join in communicating practically to the people

“ the

“ the blessings of such a constitution.” In other words, by means of rotten boroughs men of fortune are able to raise a party against, and to clog the wheels of government ; by means of places and pensions government is enabled to oppose them : the house is like a field of battle, with this difference only, that the victorious party changes seats and opinions with the conquered, and the contest is renewed.*

The fact then being undeniable, ^{Remedy proposed.} that several of our boroughs have grown worse since the revolution,

> If to deal out the most virulent invectives against persons in possession of power, if to coalesce with those very persons to gain a share of that power, if to draw down the tears, and shatter the nerves of fashionable sensibility, and overwhelm with opprobrious language a person, whose power once extended over a vast empire, if these are the marks of a great orator and politician, the writer, whom I have quoted, carries away the palm from every hero in every age. Whether Mr. Hastings is guilty or not of the high crimes laid to his charge, I shall not pretend to determine, and it appears to me, that very few indeed will be able to lay their hands on their breasts, and from a perusal of the evidence and speeches declare upon their honour, that he is either guilty or not guilty. The speeches of the celebrated declaimer above alluded to, must, from the nature of his language, have made a great impression on many minds in favour of the much injured governor.

we may fairly call on our contending parties to concur in rectifying this abuse. The evil might, without much inconvenience, be remedied by a plan similar to the one following: Let a list be made out of the voters in every borough, and let it be ordered by parliament, that every borough, not having a thousand voters, shall, out of the inhabitants of the town or hundred, gradually raise them to that number. It is said gradually, otherwise the new comers might be too insolent with their acquired power; and on that account the boroughs having five hundred voters should increase their number by fifty every year, those under that number by twenty or thirty. Thus the boroughs will be brought gradually nearer to their original form: but neither party must imagine, that the mere increase of voters will, without other steps, secure the integrity of the electors, or the representatives.

Evil of
septennial
elections;

It is a trite remark, that to a foreigner the people of England seem, every seven years, infected with madness. On the one hand are to be seen gentlemen of the first rank ruin-
ing

ing their estates to ingratiate themselves with the populace, on the other hand the people giving themselves up to every species of intemperance. This is an evil which calls loudly for redress; and it would be well if the contending parties, confining themselves solely to the rectifying of this abuse, would lay a foundation for the praises and improvement of posterity.

If vast multitudes are permitted to be called together, and treated at the expence of the candidates, this evil will always remain; and the only way to remove it is by devising some plan, which shall secure to the elector an easy way of giving his vote with as little infringement on his time as possible. The practice of calling a county together on a day of nomination is attended with manifest inconvenience. The county cannot be assembled, and the mode of determining the sense of such meetings is vague and inconclusive.

If there is any necessity for a day of nomination, the advantages expected from it might be better secured by delegates from parishes, summoned

and present
mode of
nomina-
tion.

Nomina-
tion, as
related.

summoned by the sheriff of the county. Thus, on an appointed day, let the freeholders meet in their respective parishes, and every person being at liberty to name a candidate, let them elect a delegate to carry the list to the general meeting. At this meeting let the delegates confer together in the presence of the sheriff, as president, on the merits of the candidates, and, having given their votes, let each take with him the result, to be laid before the freeholders on the day of election. On that day the delegate, being the president of the parish meeting, should acquaint the electors with what had passed on the day of nomination, and receiving their votes should make out two lists, the one to be carried to the sheriff, the other to be preserved in the parish. On a subsequent day the delegates should again meet the sheriff, who, casting up the numbers, should declare those to be the representatives, who had the majority of votes in their favour. Thus members would be returned to parliament with very little interruption to the industry of the country,
and

and if we take into the estimate the bribes, the quarrels, the riots, the drunkenness, the profaneness, the blasphemies, the perjuries, which will be avoided by this plan, no one, who is a friend to religion or virtue, can hesitate to give it his heartfelt concurrence.*

Our constitution, admitting a representative government, permits us to reason on it, and speculative men will naturally be led to pursue their researches on such a subject to a greater degree of refinement than is pleasing to the vulgar, to whom they seem to be trifling with utopian schemes and imaginary ideas of perfection. Still men of thought should not be discouraged by the vague surmises of rude and uncultivated minds. Had the present constitution of our country been proposed to the valiant band under William the conqueror, it would have been received as an

Researches
into the art
of govern-
ment not to
be derided.

* The term freeholder has been used, but there seems to be no reason, why the copyholders should be excluded from the right of suffrage. And instead of requiring a certain qualification in landed property from the candidate, any man who had a majority of votes should take his seat in the House, and be allowed, for election reasons, five hundred a year for his attendance.

Impracticable

inipracticable scheme, the wildest that the brain of man had ever conceived, and the schemes which we deride may be the means of innumerable blessings to future generations. Let the speculative man then indulge himself in his theories; and let us propose to him to inquire, whether representative government can be carried on to perfection, on a better plan than that laid down by an inspired legislator, and adopted in part by the wisest monarch that ever sat on the English throne.

Antient division of the country recommended.

The divisions of hundreds and tithings being adopted, let the persons of age in each tithing elect a president, let the presidents of ten tithings elect the president of the hundred, the presidents of ten hundreds elect the president of the thousand, and so on. Each division of ten thousand families should send two members to parliament. The votes should be taken by the heads of tithings, and carried by them to the heads of hundreds, to be conveyed to the heads of thousands, who, with the head of the ten thousand, should declare the representatives elected.

Thus

Thus none but the officers would be put to any material inconvenience in giving their votes: the offices should be annual and biennial, the headships of tithings and hundreds annual, the rest biennial. Such a division would not only be useful for the purposes of obtaining a better representation in parliament, but it might likewise restore the peace and tranquillity, which is said to have prevailed in the days of Alfred. Thus the presidents of hundreds and the superiour divisions might be invested with the power of a justice of the peace, an officer of the greatest publick utility, very much wanted at present in many extensive districts. From the presidents of hundreds the grand jury should always be selected, and the petty jury from the heads of tithings. All laws, that have received the sanction of parliament should be sent to the presidents of ten thousands, by them to be distributed among the inferiour divisions, so that every law relating to the people in general should be sent to the heads of tithings, particular bills to the heads of hundreds and the superiour divisions. The laws received

by the head of a tithing should be read to the tithing, and, if objected to by the majority, the objection with the number of votes should be sent to the head of the hundred, and by him to the superiour officer, and so on; and if it should appear that the majority of the kingdom was against any bill, it should be subjected to a revision in the next parliament. Thus would two main points be gained by this division of the country; the house of commons would, as far as human imperfection admits, be really a representation of the people, and all laws relating to the conduct of an individual would not only be known to him, but receive his approbation or censure.

Perfect representation not to be attained at present.

We should pay too great a compliment to our countrymen by supposing them capable of receiving or acting under so enlarged a plan of representation. The minds of men must be more enlightened, the lower classes must be better instructed, a more familiar and friendly intercourse must take place between all ranks of society, before such a plan could produce its due effect. This consideration

tion ought to have some weight with the contending parties. The one might be spurred on to teach the lower classes by every mean in their power the blessings of a free and good government, and the ardour of the other for introducing new forms might, by reflecting on the real state of the peasantry of this country, be considerably repressed. And, by accustoming ourselves to reflect on the difficulties on both sides of the question, we might all, with better temper, listen to the remarks made on government by men of opposite parties; we should not confound republicans with levellers, and to the exaggerating encomiasters of the present constitution with all its defects, we might apply the words of eastern wisdom, Let another man praise thee, and not thine own mouth, a stranger and not thine own lips.*

To hear some persons talk of perfect representation, one would imagine that it must be the precursor of a second golden age. The wisdom of the nation would be collected as it were into a focus, but we forget that

Not necessarily productive of happiness.

* Prov. xxvii. 2.

its folly would be as forcibly concentrated. If the majority of a nation consists of weak, ignorant, and barbarous characters, incapable of being meliorated by religion, and obstinately attached to vicious and bad customs, it cannot be supposed that their representatives should excel in virtue, or that the laws composed by them should be calculated for general happiness. If the people were superstitiously inclined, persecution against individuals of a different opinion would receive the sanction of their house of commons with the same ease, as it has been enforced by the edicts of a despotick prince: and the lover of peace and tranquillity, the philosopher whose researches extend our knowledge, and the cultivator of the arts, which soften and embellish life, would seek for that liberty under the shade of an arbitrary court, which was denied to them by the laws or conduct of a tumultuous rabble.*

* Zimmerman relates, somewhere in his excellent work on national pride, an anecdote of a gentleman who wished to enjoy the liberty of speaking his sentiments on all subjects. For this purpose he chose Zurich, staid there ten days, and then retired to Lisbon.

II. Hence

II. Hence then let us seriously re-^{Law.} commend to the contending parties to employ their thoughts on other topicks beside those of parliamentary reform, lest, being attached to a single object, they overlook the abuses, which may gradually undermine the peace and happiness of society. Some of the associated bodies have very properly declared, that our constitution has provided the means of rectifying abuses, and they would do well to point out those, which require immediate reform. We may celebrate in the loudest tone the praises of our constitution, yet, if our laws are vague and inconclusive, easily to be wrested by the powerful, and too expensive for the poor, if punishments bear no proportion to crimes, and the most atrocious murderer is levelled with a petty delinquent, it must be confessed that a stranger would have reason to exclaim, the theory of your government is excellent, but your laws betray a degree of rudeness and barbarity not to be expected in so enlightened a nation.

I. Our

Obscurity.

1. Our laws stand certainly in need of reform, and it were to be wished that the leading powers in our senate would exert themselves in giving us a better code. The evil is acknowledged by all parties, but it is the supposed interest of one to increase, by voluminous digests, the intricacy of the law. It might be urged, that the laws affecting the lower classes of the people should be equal, clear, and decisive, such that a school-boy might read them, and be brought up with a sense of their propriety, and a fear of offending them. This, without doubt, would be of great advantage to the poor ; and the political writers of the last century recommended the practice of a neighbouring country, by which the rich might be equally benefited,

Expensiveness.

2. Many of the rich are, to their cost, acquainted with the expensiveness of suits depending on the litigation of landed property, which would be at an end, by the easy plan of registering it in every county.

Register defective.

3. Some persons complain, that they have found a difficulty of recovering, or have even lost an estate from

the imperfect registers of births in parishes, from which all that are not members of the church are excluded. Supposing a civil arrangement for these purposes, the land of every person and the births of all children might be so registered, as to prevent a multiplicity of law suits.

4. A fiction in law is a mean at present of saving the country from the iniquity and oppression attending the absurd and barbarous custom of entailing property on remote descendants, but would it not be much better, by acting in an open and direct manner, to prevent the father from forgetting the ties of blood, and by abolishing entails entirely, oblige every one to act up to the principles of justice?

5. Manerial rights were of use in the feudal ages, but different times produce different customs, and a revival of all the laws in manours might be made beneficial to the lord and his dependant.

6. Our game laws are cruel and oppressive, contrary to every principle of good government, and calculated only to produce a spirit of aristocratick

aristocratick insolence in the higher, and that of meanness, pilfering, and plunder in the lowest classes. It has been urged in their defence, that if it were not for them, we should be over-run with poachers; but in fact, as high duties made the smugglers, the game laws make the poachers. Destroy the game laws entirely, let game be sold freely in our markets, and the poachers, as the smugglers have done lately in many places, will return to the habits of useful industry. We must not omit here, that the higher classes will be benefited: for in what county can we go without hearing of the petty squabbles of country squires, about hares and partridges, nauseous tales, disgusting to every man of sense and a liberal education.

Poor laws. 7. The amendment of the poor laws requires a cautious and skillful hand, and much praise is due to some very respectable members of the house of commons, for endeavouring to excite the attention of their colleagues to this subject. There is an excellent precept in the mosaical law, which should be a guide to all legislators;

legislators; thou shalt not muzzle the ox which treadeth out the corn. The poor are the instruments of the ease, comfort, and luxury of the rich, and it would be contrary to the temper of englishmen, as well as the spirit of christians, to be ungrateful to those, from whom we all derive our support. If a labouring man does not receive sufficient wages to enable him to bring up a numerous family, and to lay by something for his support in the decline of life, it is but common justice, that they, who have been enriched by his labours, should, when his strength is gone, make his latter days chearful and comfortable. So far then from diminishing the poor rates, there seems, unless the price of labour should be considerably increased, sufficient reason for increasing them. The poor rates must, if the price of labour is given, increase with the increase of taxes; for every tax laid on the consumption of the poor is a great diminution of his pittance, and the half-penny or farthing, a trifle to the tax imposers, is severely felt in the cottages of industry. Should these laws

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be ever revised, there is a class in society which may be greatly benefited; this is the class just above poverty, just above want themselves, but by means of rates, reduced to a worse situation than those who receive their benefactions. To follow the beautiful gradations of nature in all her operations, this class should be released from the poor rates: thus there would be three classes in society, that which pays to the relief of others, that which receives, and that which neither pays nor receives. A revision also cannot take place without relieving the poor from the restraints under which they at present labour in removing from one parish to another, and the expensiveness of litigation arising from the present code might perhaps be remedied. But in these affairs we must, as was before mentioned, be particularly careful, lest the poor should be injured: the rich can take care of themselves, the poor have none to defend them, and the fault of most governments seems chiefly to consist in this, that they pay the most attention to the maintenance and support of the corinthian

ian capitals of society, as some orders have been foolishly called, to the great neglect of the comfort and wellfare of the most numerous and important part of the community.

The practice of the law at present, Practice of the law. an evil, which time is likely to increase, threatens to render the profession unworthy of a man of liberal education. To set a young person down to copy declarations, pleas, replications, rejoinders, surrejoinders, rebutters, surrebutters, is not a probable mean of correcting his judgement, enlivening his imagination, or qualifying him to convince by the ardour of his eloquence. Yet it now seems necessary that Demosthenes and Cicero should give place to the precedents in the office of a special pleader: and, if our laws continue to increase with the same rapidity as they have done in the present reign, the future generation of barristers must sink into the level of vulgar mechanicks. Already we have seen the inferiority of the bar, when the best specimens of its rhetorick were compared with the genuine effusions of eloquence from our popular speak-

ers. The oratours of antient times, we are informed, did not blush to receive information from the erudite professors of the law, and if the encouragement of eloquence were thought of sufficient importance, a similar arrangement of offices might not be without its use. Were the attornies confined to their present employment: were special pleaders, men of cool heads and fit for sedentary lives, occupied in arranging, explaining, digesting our statutes and acts of parliament, were it their business to take an action from the attorney's hands, decide on its legality, and put it into due form, to be presented with every statute or case relating to it to the barrister, the time of this latter character, the highest in the profession, might be employed in the pursuit of every species of liberal knowledge. It would not be expected from him, to have an antiquarian insight into our laws and customs, nor to enter into all the detail of an attorney's clerk; but we should look for elegance of language, propriety of expression, convincing eloquence, happy allusions, and to
sum

sum up the whole in a few words, we should expect to find in him both at the bar and at the table the gentleman and the scholar.*

The tediousness of the law, as well as its uncertainty, has been a frequent subject of complaint; but, though deprecated by every one, there does not seem any disposition at present in the lords or commons to probe these evils to the bottom. Its language too is barbarous and rude: for, under the pretence of avoiding by infinite circumlocutions cavil and dispute, scarce an act of our legislature is intelligible to a man of tolerable capacity; and the jargon of a profession, which ought to use the clearest and best terms, is now become proverbial. We should therefore be much indebted to the contending parties, if they would unite their efforts in making an effectual reform in that part of our system, on which life, property, and reputation

Tediousness, and language.

* Since the inns of court have ceased to be places of education, and the exercises there are merely formal, might not the privilege of pleading at the bar be allowed to any one, in whom the plaintiff places confidence?

so

so much depend. The task is not so arduous as may be apprehended: there are, among us, men of learning and abilities, as well qualified for this undertaking as the celebrated lawyers in the days of Justinian; and the only thing required on the part of the legislature and people is to be seriously persuaded, that internal good government is more productive of general happiness, than the interference in foreign politicks, and the triumphs of a victorious navy.

Religion.

III. In perusing the history of ancient or modern times, the connection which has always taken place between religion and legislation must strike every attentive reader. This union is supposed to be of a peculiar nature, and, while in our own country the grave divine celebrates it as an alliance between church and state, the jolly toper no less religiously fills up the bumper to church and king. The latter character means no disrespect to his sovereign, by making him give place to an institution esteemed sacred by the vulgar; but the former, lamenting the loss of ancient
 tient

tient splendour, is willing to retain
 as long as possible this last vestige of
 ecclesiastical power. Seventeen cen-
 turies ago the church, creeping on
 the ground, bowed its head to the
 authority of Cæsar, within three
 centuries after we find her in the
 embraces of a warlike emperour;
 the harlot soon learned to tread on
 the necks of kings, and, drenched
 with the blood of saints and martyrs,
 obtained universal empire. Our an-
 cestours groaned under her iron
 yoke, the fruit of their industry was
 carried away to feed her pampered
 appetite, and to satiate her luxuri-
 ous paramours. The island was com-
 pletely devoted to her lust; but vice
 is never secure in its seat, it has no
 stable hold, the same capricious and
 inordinate passions which tempt men
 to forsake the fair object of their be-
 trothed love, lead them soon to cast
 away in disgust the loathsome prosti-
 tute. To capricious and inordinate
 passion we are indebted for deliver-
 ance from the harlot's power: she
 can no longer free the subject from
 his allegiance, nor compell the mo-
 narch to accept the crown at the
 footstool

footstool of her throne. Her superiority is gone, and protestant divines should beware of applying those terms to a political institution of this country, which must involve them in all the guilt of antichristian usurpation.

Alliance
between
church and
state a
fiction.

The alliance between church and state is a fiction, which could not be realized in this country, without subjecting the abettors of it to the penalties of high treason. We might as well talk of an alliance between army and state, navy and state, law and state. Would queen Elizabeth have permitted this language, and is it not equally certain, that such expressions must be displeasing to every branch of the Brunswick family? Has the state, from the moment it became protestant, ever made an alliance with any church, and do not all our ecclesiastical laws depend on the authority of parliament? Where does the church meet, where does it make laws, where does it propose terms of mutual kindness to her ally the state? In this island are two institutions called the churches of England and Scotland, for which
the

the clergy of the church of England are ordered by law to command the prayers of every congregation. Are they both allies of the state? Is there also any alliance between the two sacred bodies? Let us beware of the deception couched in ambiguous terms; for there is no society in this country that can pretend to make terms with the state, nor is there any person, whose authority does not depend on an act of parliament. And let divines be particularly cautious, lest king and people, recollecting the sufferings of former times, should be tempted to suspect, that, as long as there are priests, the laity is in danger of being duped by the priesthood.

The established church of England can be considered only as a political institution. The design of it is to celebrate at certain times religious worship, and to instruct the people in certain doctrines laid down by act of parliament. Whether the instruction communicated is suited to the present times, and whether the expence attending it is proportioned to the benefits, which the subject derives

Church of
England a
political
institution.

rives from it, are questions of political enquiry. The farmer and the land-holder complain, that tithes are a grievous oppression, that thereby industry is cramped, and our lands are deprived of their proper culture. Divines, say they, laid a claim in former ages to the produce of our fields, in consequence of a regulation for very different purposes in a distant region, and they not only persuaded our legislature to adopt it, but have exacted the odious tax in a manner unknown to the favoured people of God. The customs of Judea are no rule for this country, and consequently it is no argument against our present mode of paying the clergy, that we have deviated widely from the mosaical institution. We are interested only in the enquiry, whether a certain body of men should depend on government or the people for its subsistence, or by possessing a considerable stake in the landed property, be in a great measure rendered independant of both. The question has on every side its difficulties. Supposing the clergy to be like the army or navy under the executive power, there

there is a danger in our complicated form of government, lest the regal part should absorb that of the other two bodies. For ten thousand men in black under the direction of an individual are a far more formidable body, than ten thousand times that number in arms, and more likely to produce the greatest injury to civil society.

If checks could be found to remedy the inconvenience attending the absolute dependance of the clergy on the crown, such a system would be found to possess great advantages: for, as the military are sent only, where their presence is necessary, the religious corps would be disposed in a manner more beneficial to the kingdom. We should not see them in groupes in some towns encouraging, or rather being the patrons of every species of luxury, while extensive districts are entrusted to the care of a few curates: a regular disposition of them might take place, which, from a proper attention to the learning and morals in the candidates for the office of publick instructors, would be attended with

F infinite

infinite benefit to the lower classes of the community. Here then is a subject, which might usefully employ the thoughts of our contending parties. Let them endeavour to remove the complaints of our landholders, taking care at the same time that so large a body as the clergy should not be entrusted with any temporal power, and that the profession should possess such emoluments, as might render it a proper pursuit for men of liberal education.

Revision of
the liturgy
recom-
mended.

Every thing in this world convinces us, that there is only one being in his own nature unchangeable. The institutions of man can scarce be suited to one generation, and the wisdom of government would in no instance more eminently display itself, than by accommodating its laws to the improvement of knowledge in every age. The parliament, which appointed, and the people, which received the form of worship now in use, entertained very different notions from ours on religious subjects. It could not be otherwise: for, by rejecting many articles in the creed of their ancestors, they entered into contro-

controversies, which paved the way for future improvement. This was perceived in the next century, but unfortunately the ruling powers, by calling together men of too discordant opinions, and endeavouring to reconcile parties separated from each other by a series of mutual injuries, confirmed by this experiment a truth, with which they ought to have been acquainted, that the councils of divines of different churches are never attended with success. The liturgy of the church of England is a composition derived from the mass book of Rome, over which, if it has in some respects a manifest superiority, 'it is very far from that standard of purity in' its arrangement, language, or 'doctrine, which is required from such compositions.' The ablest writers in its defence acknowledge, that it is susceptible of improvement, but are fearful of the danger attending every reform. We have seen the cause of failure in the last century, and, to avoid the splitting on the same rock, might not the legislature appoint commissioners of its own church to revise the book of prayers, and to propose

propose a form better suited to the present times? This should not however supersede the liturgy in present use. There may be congregations attached to the common liturgy, whose prejudices should be humour-ed, and, instead of forcing another on any one, the legislature need only permit the approved forms to be read in those churches, where the people are willing to give them admission. Thus continual improvements might be made in the form of worship, the more imperfect liturgies would gradually disappear, and in a few centuries perhaps the religious antipathies of the present days would cease to influence the conduct and embitter the lives of our posterity.

Test laws.

The reform of our religious establishment cannot, it is obvious, engage our attention without some animadversions on a controversy, which has been lately carried on with a considerable degree of animosity. To preserve the establishment it was thought necessary in the last century, to require from every officer under the executive government a religious test. Of course a degree of honour has

has been attached to the believers, or pretended believers, of certain doctrines, and the dissentients have been involved in a corresponding portion of disgrace. In considering this question, we are to look upon these bodies merely as political factions; for, did we refer to the book, which both parties are supposed to make the guide of all their actions and opinions, the question will not admit a moments debate. By calling themselves christians, they ought in every instance to yield to our saviour's precepts and example, and there is not a proposition in Euclid clearer than this, that no body of christians is authorised by the gospel, to allure men to its party by civil emoluments, or on account of religious opinions to deprive them of civil advantages.

Is then a test necessary to preserve the political existence of the church of England? We shall be able to answer this question by considering the danger that would immediately accrue from the removal of the test. In some of our manufacturing towns dissenters would share with churchmen in municipal offices: a few, and
 very

Repeal of
the test
laws not
dangerous,
either from
the admission
of dissenters
into
offices,

very few, would exercise in counties the office of justice of the peace. The latter office depending on the crown, the moment there was an appearance of danger, it might be removed by striking the disaffected out of the commission. Now, is it probable, that an institution, whose influence, from its own wealth considerable, is supported by that of the nobility, and the greater part of the landed interest of this country, could receive any injury from the admission of a few persons into municipal offices. The supposition is absurd, and the apprehension of danger must arise from a suspicion of the dissenters receiving; on the removal of the test, a vast accession of numbers, united together in a firm resolution, to destroy the religious establishment. But persons, who reason in this manner, are not aware, that the dissenters do not by any means form a compact body; and that the three powers, presbyterians, baptists, and independants, allied together for one single purpose, would, on the obtaining of that point, retire to their different camps, and be separated from each other by the usual marks of theological hatred.

On

On what ground are we to expect an increase of their numbers? The majority of the people, who do not look forward to any thing but the fruits of their industry, will always go to that place of worship, which they think the best: and, unless it can be proved, that the worship of the three bodies above-mentioned is far superiour to that of the church of England, they must remain, as they have been for some time, increasing only with the increasing population of the country.

Let any man then compare together coolly the worship of these different bodies. The object of worship, generally speaking, for there are few congregations which worship only the one true god, is the same in all; some using a prescribed form, others what is called extempore prayer. The superiority on either side depends so much on the abilities of the speakers or readers, that, on considering the rank of life from whence they are respectively taken, and the advantages of education, which they enjoy, it will appear improbable, that the church of England should be inferior

feriour to its opponents. The harmonious numbers of Watt's hymns, the commonly received book among the dissenters, may be supposed to give them a superiority in one part of the service over the church; but the psalms of Sternhold and Hopkins, though deficient in metre, do not inculcate unscriptural doctrines, nor does their language, though simple and unadorned, ever sink into the lullabies of the lyrick poet. The sermons of the church of England, whether considered as specimens of eloquence, as treatises of moral philosophy or didactick theology, do not suffer on a comparison with those of the dissenting party: and there are few churches, which could bear such language or sentiments, as are too frequently uttered in several meetings. Hence the danger, apprehended from the mode of worship among the three bodies above-mentioned, seems to be chimerical, and government has, by a sufficiently accurate survey, been informed, that the number of opponents to the church establishment cannot occasion any ground of alarm: but perhaps nei-
ther

ther government, nor churchmen, nor dissenters are aware of the increase of a body, already more numerous and better organized than the latter party, and which may, in no length of time, occasion a revolution in our ecclesiastical history.

Although no danger is to be apprehended from the removal of the test, government may very fairly demand ; what advantages shall we derive by departing from our old laws and favouring the dissenters? The answer is obvious. By removing a reasonable cause of complaint from the most industrious and peaceable of your subjects, you preserve a steadier attachment to the established authority. There is something in the heart of man, which revolts at oppression ; and to be beloved, you must render yourselves worthy of affection. The conduct of churchmen towards dissenters has been, and is, disgraceful in the extreme : it is time to cast away the leaven of party spirit, and to act as christians. By this, says our Saviour, shall all men know that ye are my disciples, if ye love one another.

but beneficial to the state.

and justifi-
able by the
example of
the su-
preme ma-
gistrate.

Did the repeal of the test act depend only on one part of the legislature, it cannot be supposed, that the redress of the dissenters would be delayed a moment. For, how could the first magistrate deny that to a great part of the people, which, in different places acknowledging his authority, he claims for himself. Either he is a member of the church of England, or he is not. If he is a member of the church of England, by passing into Scotland he becomes a dissenter, but is not on that account deprived of his office: another form of religion prevails in Hanover, but he retains his electorate. What could prevent him then from saying to the dissenters, As my temporal office is not in other countries affected by my religious opinions, neither shall you suffer any civil injuries for dissenting from the establishment of England. Be peaceable citizens, and worship God as you please; your religion no where teaches you to disobey your civil governours, except when they presume to interfere in matters of conscience.

It

It is much to be lamented, that, in treating on a subject relating to religious opinions, we cannot persuade the professors of christianity, to abide by the commands of their common master : instead of which, not only the statesman, but those who pride themselves on being ministers of the gospel, set up in direct opposition to him maxims of worldly policy. The line of truth is direct and clear, the paths of error are infinite. In the conflicts of passions and prejudice in a house of commons the still voice of christianity cannot always be heard ; the statesman is too apt to consider it as a silly devised fable, well calculated to keep the people in order, and there are few willing to receive it in the only manner, which commands attention, as the direct word of God. Hence perhaps the dissenters would do well, to leave the state entirely to itself, content, as the early christians were, to draw men to a purer form of worship, and to trust to a change of opinion for entire relief from persecution. The most improbable tales were in early times vented of the christians ; their meetings

Passions and
prejudices
interested
in opposing
it.

ings were burnt down, and their persons were assaulted. Is it to be wondered at, that the same practices should, by the enlightened infidel, the interested churchman, and the ignorant populace, be in our days both repeated and applauded? ‘The same passions will every where produce on certain minds the same effect; and the priest in every age, whether he celebrates the orgies of Bacchus, or solemnizes the rites of the Eucharist, will, should either his victims or his allowance fail, oppose in either case every truth, which threatens to undermine his altars, or weaken his sacerdotal authority.

Improve-
ment re-
commend-
ed to both
churchmen
and dissen-
ters.

‘The church stands certainly in need of reform, the dissenters would do well to consider also, whether they are not far, very far from the summit of christian perfection. The few of us dispersed over England, who, through fear and love of the one true god, are obliged to separate ourselves from both parties, cannot but view with concern, that, while they are so much occupied in a matter of small temporal importance, the great truths of religion are neglected:

lected: and we must never let slip any opportunity of exciting them to examine and improve their separate forms of worship and religious communion.

‘ That christianity has made very little progress for the last fourteen hundred years, is obvious to every reader of ecclesiastical history, and the professors of it ought not to be surprized, since, during so long a period, the world has been under the influence of two opinions, nearly subversive of all true religion.

Digression on the abuses prevailing in christendom at large.

‘ 1. The first is a very antient opinion, which it was the intention of the jewish dispensation to eradicate, by substituting in its place a long lost and almost self evident truth, That there is one god, and only one god is supposed by many to be a truth attainable by human reason; but if it were not so, the authority of revelation has established it, and the whole heathen mythology is declared to be a fit object of ridicule.*

Deviation from the worship of the one true god.

Still

* A learned writer on the mythology of the ancients makes the following remarks on the grossness of their superstition: “ Who would

Still this truth, confirmed by various acts of omnipotence, did not overcome entirely the prejudices of the chosen people of God; and as they associated with the worship of Jehovah that of the neighbouring nations, the great body of christians has imbibed, and glories in imbibing from the schools of Athens, opinions nowhere sanctioned in scripture, and has associated the worship of created beings, with that of the god and father of Jesus Christ. So great a deviation from truth must necessarily be attempted with dreadful effects, the most solemn act of life is rendered childish, and the unbeliever con-

“ would imagine, that one of the wisest nations that ever existed, could rest satisfied with such idle fictions: and how can we account for these illusions which overspread the brightest minds? We see knowing and experienced people inventing the most childish tales; lovers of science adopting them; and they are finally recorded by the grave historian: all which would not appear credible, had not we these evidences so immediately transmitted from them. And it is to be observed, that this blindness is only in regard to their religion; and to their mythology, which was grounded thereupon. In all other respects they were the wisest of the sons of men.” What will the writers on the mythology of the eighteenth century think, a thousand years hence, of the European fictions?
found-

founding the purity of the gospel with the prejudice of its professors, thinks himself entitled to ridicule religion, and to despise christianity. Let churchmen and dissenters examine seriously how far they have deviated from the true faith, and, as they reject many points established by the councils of the romish church, let them expunge every thing, which favouring of its leaven, is to be found in presbyterian synods or episcopal convocations.'

2. When men blindly receive, instead of revealed truths, the wild fancies of speculative heathens, it is not to be wondered at, if the other parts of their system should be in opposition to the plainest dictates of christianity. Our saviour was frequently under the necessity of correcting the foolish vanity of his messengers, and, foreseeing the evil consequences of ambition, he reprobated in the strongest terms every desire of pre-eminence among his disciples. Yet how little have either his precepts or his own example been observed. We have seen in the church of Rome, with what ease the best

Corporate
distinction
of clergy
and laity.

H system

system of religion and morals may be perverted to the most detestable purposes, but forget, that the same leaven ferments in the bodies glorying in a separation from her, and a reformation, as it is improperly called, of her abuses. The love of pre-eminence is the second circumstance, that has been a fatal hindrance to the progress of christianity. The christian world has been divided into two parts, clergy and laity, distinguished both by dress and manners from each other. The clergy every where affect a superiority, and in consequence claim to be indulged with peculiar power and privileges. It was natural, that when this pre-eminence was once established in the minds of the degraded laity, the clergy should get the countenance of the legislature, for the framing of laws, not only to preserve their own dignity, but to prevent the interference of the people in ecclesiastical concerns. Hence 'ecclesiastical courts, ecclesiastical ranks and titles,' ecclesiastical dress, 'all repugnant to the spirit of christianity. The laity, like brute beasts, sit tamely under this usurpation: a man, if

a priest or minister enters, is not a master of his own house, he must not thank God for the blessings of providence at his own table, he cannot pledge his faith to a lovely woman without the interference of the priest, his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home without another spiritual incantation.

‘These superstitious prejudices are without doubt highly beneficial to the interest of the clerical community, but the morals of neither party are consulted. The laity are apt to imagine, that there are some practices, in which they may be indulged without any imputation on their christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his cloaths.’ The simplicity of the gospel admits nothing of this sort. All christians are equally servants of one common lord, equally bound by his precepts, and equally entitled to the privileges of his religion. It may be necessary to have persons well educated for the instruction of the people, and the conducting

Conse-
quences of
this corpo-
rate dis-
tinction.

of the publick worship, but as far as this is regulated by the civil power, the body is political, not spiritual. It may be expedient, that one person should conduct the worship of a dissenting congregation, but it is dangerous to associate the performers of this office in a kind of spiritual connection. The dissenters view with an evil eye the visitations of archbishops, bishops, archdeacons, &c. but the assemblies of their ministers, whether at the opening of a chapel, the ordaining of a brother minister, or for various other purposes, denote as much love of spiritual pre-eminence, as is to be found in the established church.

It would be endless to pursue the various evils that spring out of this strange distinction among christians. Age and abilities command respect, it is willingly paid by every liberal mind and lover of good order; from the profession also of a teacher of christianity it ought not to be withheld. But, let it be kept within due bounds, let not the teacher of a petty meeting claim the authority of a pope, let him not be the means of setting

setting families and congregations at variance. It is a great mistake to suppose, that persecution is confined to established churches; there is a pernicious sort prevailing among sectaries, and to dissent from the society, of which one is a member, is too frequently attended with the loss of an income. Not to omit, that the terms heterodox, heretick, deist, infidel are scattered abroad with great rapidity in dissenting communities, and under pretext of consulting the good of his soul, a narrow-minded congregation will frequently deprive an individual of all his earthly comfort.

The contending parties, whom we are addressing, will however consider this as a digression, and leave to others the care of directing the spiritual concerns, and meliorating the religious opinions of mankind. It suffices, that we have pointed out some objects which more immediately call for their attention. Let them endeavour to remove the tithes, provide for an amendment of the liturgy, and repeal the test act, and having done this, they may safely leave farther improvements on a christian basis

Subject
resumed.

basis to those who shall, by their means, be enabled to understand better the principle of true religion.

Objections
answered.
1. Reforms
too nume-
rous.

To every thing that has been urged in the preceeding pages, two formidable objections occur : first, that the reforms proposed are too numerous; and, secondly, that this is by no means the time to entertain any thoughts of reform. With respect to the number of reforms it may be answered, that we are not to look either to the number or magnitude, but to the expediency of them, and farther it is not supposed, that all these reforms should take place at the same time : they are not to be undertaken without due care and deliberation. Still there are some things, which may be put immediately into execution : the game and the test laws may be repealed, a new code of criminal law framed, the liturgy revised, and the boroughs regulated in this session of parliament. And the people seeing, that the house of commons, instead of indulging in so much personal altercation and frivolous panegyrick, is seriously occupied in promoting and improving the wellfare

fare of the state, will thankfully receive these presages of better times, and contentedly wait till a longer period shall have put an end to all their grievances.

2. The trite argument, that this is not the time to reform, can no longer have any weight on the minds of englishmen. It has been repeated in periods of publick commotion and the profoundest peace. The natural indolence of man may plead for the support of abuses, but the example of a neighbouring nation must surely produce an effect in the cabinet of every monarch. From neglecting to examine and correct the abuses, prevailing through length of time in an extensive empire, we have seen a monarch hurled from his throne, the most powerful nobility in Europe driven from their castles, and the richest hierarchy expelled from their altars. Had the monarch seasonably given up some useless prerogatives, he might still have worn the crown; had the nobility consented to relinquish those feudal privileges, which were designed only for barbarous ages, they might have retained their titles; could

2. Time for reform improper.

could the clergy have submitted to be citizens, they might still have been in possession of wealth and influence. The proper time to correct any abuse, and remedy any grievance, is the instant they are known; if neglected they continue to increase, till the ruling powers are in fear for their own safety, and being over-awed by the party, interested in corruption, they can neither retreat nor proceed without endangering the common weal.

The present time particularly favourable for reform.

Happily for this country we are in a very different situation. There is no party to over-awe the government, and the people are united to give its measures effectual support. Nothing can be forced upon it: every reform must proceed from, and be under the direction of the ruling powers. How much then is it to be desired, that such an opportunity of setting government on its best foundation should not be lost, and that a timely removal of every grievance may render the name of another revolution disgustfull to englishmen. Should this opportunity be lost, it may never occur again. The discontented party,

party, for there is, we have been informed by high authority, one sufficiently numerous to excite alarm, may increase, and by dwelling upon real evils, undermine that power, which was resolved not to listen to any terms of reconciliation. Whatever may be our fate with respect to foreign nations, peace and union are the greatest objects at home.

Let the republicans be moderate in Conclusion.
 their demands, the anti-republicans not pertinacious in opposing every reform, and government, strengthened by the accession of both parties to it as a centre of union, will present to the world a compact body, firmly united to preserve an improving constitution, and to promote the publick happiness.

A P P E N D I X,

ON THE

EXECUTION OF LOUIS CAPET.



L OUIS CAPET has afforded an excellent topick for parliamentary declamation. Let us strip the subject of figures of rhetorick, and no englishman need be alarmed at the execution of an individual at Paris. Louis Capet was once king of France, and entitled to the honours due to that exalted station. The supreme power in the nation declared, that France should be a republick: from that moment Louis Capet lost his titles. He was accused of enormous crimes, confined as a state prisoner, tried by the national convention, found guilty, condemned, and executed. What is there wonderful in all this? Our revolution, the boast of the present days, pursued the same conduct as nearly as possible. Our convention declared, that James the 2d should be no longer king: it did not chuse to abolish kingship, but dignified William the 3d with legal honours. James was stripped of his titles, and became plain James Stuart, and the republican William became a sovereign. James was not tried, condemned, executed, because he saved his life by flight: but the laws against himself and his son, and the proceedings in the years fifteen and forty-five, must convince the most superficial reasoner, that the maxims of the english

and french nations, with respect to the dethroning of kings, are exactly the same. But some one will say, Louis Capet was unjustly condemned. Ninety-nine out of a hundred, who make this objection, have not given themselves the trouble of examining the records of the trial: and why should I give greater credit to the remaining objectour than to the verdict of the court? If Louis Capet did, when king, encourage the invasion of his country, however we may be inclined to pity the unfortunate man for the error of his conduct, we have no right to proclaim him innocent in point of law. It is, in short, no business of ours, and if all the crowned heads on the continent are taken off, it is no business of ours. We should be unworthy of the constitution settled at the revolution, and enemies to the Brunswick family now seated on our throne, if we denied to any nation the right of settling, as it pleased, its own internal government. These sentiments do not prevent us from commiserating the situation of the french refugees. They are entitled to our compassion; and it is but right, that we should attend to their distresses, since foreign countries have been put to the expence of maintaining those refugees from our own island, who, for their attachment to an ancient family, were, by the rigour of the two former reigns, subjected to all the penalties exacted from recusants by the present government in France.

THE EFFECT OF WAR

ON THE

P O O R.



THREE days after the debate on the king's message, I was walking from my friend's house to the neighbouring town to inspect the printing of these few sheets, and, in my way, joined company with two men of the village, who, being employed by the woolstaplers to let out spinning to the poor, had lately received orders to lower the value of labour. We were talking on this subject, when the exclamations of a groupe of poor women going to market, who over-heard our conversation, made an impression on my mind, which all the eloquence of the houses of lords and commons cannot efface. We are to be sconded three-pence in the shilling; let others work for me, I'll not. We are to be sconded a fourth part of our labour. What is all this for? I did not dare to tell them what it was for, nor to add insult to misery. What is the beheading of a monarch to them? What is the navigation of the Scheldt to them? What is the freedom of a great nation to them but reason for joy? Yet the debating only on these subjects has reached their cottages. They are already sconded three-pence in the shilling. What must be their fate, when we suffer under the most odious scourge of the human race, and the
accu-

accumulation of taxes takes away half that daily bread, which is scarce sufficient at present for their support?

Oh! that I had the warning voice of an ancient prophet, that I might penetrate into the inmost recesses of palaces, and appall the haranguers of senates! I would use no other language than that of the poor market women. I would cry aloud in the ears of the first magistrate, We are sconded three-pence in the shilling, the fourth part of our labour, for what? I would address myself to the deliberating bodies, We are sconded three-pence in the shilling, the fourth part of our labours, for what? Is there a man, that could stand out against this eloquence? Yes; thousands. Three-pence in the shilling for spinning conveys no ideas to them. They know not what a cottage is; they know not how the poor live, how they make up their scanty meal. Perhaps there may be some one in our house of commons, whose feelings are in union with mine; communicate them to your colleagues, impress them with the horror attendant on their deliberations; tell them what the deduction of three-pence in the shilling occasions among the myriads of England. And should any grave courtier, pitying the distresses of the poor, be anxious to relieve them, say to him, There is an easy method: let the first magistrate, the peers, the representatives of the people, the rich men of the nation, all who are for war, be sconded one fourth part of their annual income to defray the expence of it. Let them be the first sufferers; let the burden fall on them, not on the poor. Alas! my poor country

countrymen, how many years calamity awaits you, before a single dish or a glass of wine will be withdrawn from the tables of opulence!

At this moment, perhaps, the decree is gone forth for war. Let others talk of glory; let others celebrate the heroes, who are to deluge the world with blood: the words of the poor market women will still resound in my ears, We are sconded three-pence in the shilling, one fourth part of our labour. For what?

FINIS.

AN
ACCOUNT
OF THE
PROCEEDINGS
IN THE
UNIVERSITY OF CAMBRIDGE,
AGAINST
WILLIAM FREND, M. A.
Fellow of Jesus College, Cambridge,
FOR PUBLISHING A PAMPHLET, INTITLED
P E A C E and U N I O N, &c.
CONTAINING
THE PROCEEDINGS IN JESUS COLLEGE,
THE TRIAL IN THE VICE-CHANCELLER'S
COURT,
AND IN THE COURT OF DELEGATES.

Published by the Defendant.

I would as soon murder a man for his estate, as prosecute him for his religious and speculative errors.

Lord Chesterfield's Letters to the Bishop of Waterford. Letter XXXI.

C A M B R I D G E :
PRINTED BY B. FLOWER,
AND SOLD BY W. H. LUNN, AND W. PAGE, CAMBRIDGE :
ALSO BY G. G. AND J. ROBINSON, LONDON : J. MARCH,
NORWICH ; J. WHITE, WISBICH ; T. SHEPHERD,
BURY ; AND J. FIDELIA, LYNN.

M, DCC, XCIII.

[PRICE FOUR SHILLINGS AND SIX-PENCE.]

TO THE
M E M B E R S
OF THE
HOUSE OF COMMONS.

GENTLEMEN,

SEVERAL of you are in the same situation with myself, both fellows of colleges, and members of an academical senate : a much greater number enjoys the privileges of the latter character. In either capacity, the proceedings in the university of Cambridge, by which an insolent and infamous attack has been made upon my rights and property, deserve a serious investigation. But, if not a single member of the house had either received his education at, or been connected with an university, institutions of such national importance require continual inspection ; and the places, in which our young men are to be trained up to the love of their country, and the knowledge of every useful science, are not to be degraded by the pitiful resentment of monks, and the squabbles of low characters intriguing for preferment.

I call on you, not only on my own account, though I think that every injured englishman has a claim on the protection of his fellow countrymen in parliament, but for the sake of my country, that, by a timely interference on your part, an abominable spirit of bigotry and fanaticism may be crushed in our seminaries of learning, and that the rewards of literature may not be made the vehicles of corruption, and the bribes of time-serving and interested priests. The university of Cambridge stands in need of a thorough reform. My own experience of its merits and defects, is considerable ; and the injuries I have received in it, do not make me unmindful of the former, or willing to exaggerate the latter. The application of my first year, gave me an early opportunity

portunity of examining thoroughly our system of education, and the manners of those who preside over it : but in the discharge of the duties of an important office, I was not prevented from employing many hours in the studies of sacred literature. In consequence of this application of my time, I disbelieved the athanasian creed ; and, on declaring my disbelief, a learned doctour, now a right reverend prelate, who had most probably never given himself the trouble of making similar researches, deprived me of the office of tutor, and an income of above a hundred and fifty pounds a year.

To tell a man of reading and reflection, that he is not to write, is as absurd, as, in setting a sumptuous entertainment before a hungry mouth, to prohibit an enjoyment of the repast. The situation of this kingdom at the end of last year struck me, as it did many others, with apprehensions, not so much of sedition, as held out from high authority, as of the inroads of despotism, from various associations, formed under the pretext of defending liberty and property, yet giving encouragement to a species of tyranny, which marks the decline of an empire. When private confidence is destroyed, and informers rise up throughout a kingdom, and one part of a nation is set against the other, we may be sure that the time of change is near, and whatever merits the constitution has, they must be either given up, or carried on to a higher pitch of perfection. The latter was my hope ; and, not being a member of any association, I resolved to address the contending parties, with a view of bringing them together, to consult for the common good. Among other political institutions, I could not avoid making some remarks on one called the church ; but at the very mention of reform in that, which most of all requires it, the bigots and time-servers of Cambridge, were up in arms : they met together, formed a cabal, conspired with the judge, determined to punish, looked out for a law, summoned me for the breach of one, indicted

dicted me upon that and another, took up the attention of the university above three months on this dispute, exposed their own ignorance and insignificance, but had the satisfaction at last of hearing the judge pronounce a sentence perfectly illegal and arbitrary. That no instance of vexation might be wanting, the master of my college was at the same time employed against me, who, after caballing with a few of the fellows, had the unparalleled insolence to order me to remove from college; and, by way of enforcing his sentence, to prohibit the servants from supplying me with necessaries. Is this the proper treatment of a student? Put yourselves, gentlemen, into my situation. My education has been a very expensive one, and gave me a natural claim to the advantages, which I once enjoyed. Why is the declaration of sentiments to be made a pretext for driving me from the seats of learning, and depriving me of my property?

There is a publick officer to accuse individuals of crimes committed against the state: a court is wanting, in which an individual may make his complaints against the nation. Were I to plead in such a court, I would accuse the english nation of injustice and cruelty. Of injustice and cruelty, I repeat the words, to myself; and there are, I doubt not, many persons in the same situation. The nation, I would say, held out encouragement for me to expend my property, and to exercise my talents, in the hopes of meeting with a suitable reward. I did so: but for proclaiming, as in duty bound, what appeared to me to be the truth, I have been subjected to loss of property, and perpetual mortifications. It is unjust, I say, in the english nation, to permit a student to be deprived of his property on account of his sentiments; and it is cruel to hold out that encouragement, which may expose him to the stings either of conscience or poverty.

Let an honest jury sit on this cause, and the sophistry of priestcraft would not prevent a determination in my favour : but, instead of damages, the nation should only be called on to redress these evils, and to prevent others from falling into similar difficulties. Remove at once, we say, all your penal laws respecting religion ; put it on the same footing with philosophy ; and, if it is necessary that any one should subscribe a set of propositions, drawn up by quarrellsome divines, above two hundred years ago, let the subscription be confined to those who are to teach them. Is it not ridiculous, that many of you should have subscribed the thirty-nine articles, when you have never read them, and perhaps scarce know that you have set your names to the belief of them ? If you were questioned in the house by those members, who have not gone through this ceremony, could you enter into the disputes on the five points ; and should you not be the first to laugh in private at being supposed to believe them ? What greater connection has the entrance into an academical senate with the thirty-nine articles, than into the house of commons ? But perhaps it will be said : if we do not make such restrictions, persons, who are not christians, may be admitted into the highest ranks of the university. We answer : if it is requisite to have only christians, draw up such articles as may be subscribed in the present days ; and you know, and all men know, that there is no one in England who subscribes the articles in the sense in which they were imposed, nor can such a sense be fixed on them by any one, in which the acquiescence of another on the principles of common sense is to be expected. But supposing non-christians to be admitted, where would be the harm ? May not an infidel be a very good classical scholar, an excellent mathematician, an acute logician ? May he not be an ornament to the university in a variety of arts and sciences, without ever entering into religious disputes ? I have had some experience of academical men, and should be very wil-

ling

ling to exchange a few of our most orthodox men, with long faces, and empty skulls, for the learning, talents, and integrity of infidels. Let us lay aside these idle distinctions. There is nothing so well calculated for the happiness of mankind as religion ; but, when it becomes an instrument of policy, and is made a discriminating mark in society, all the vices of the priesthood necessarily fall into its train, and that, which should be only a blessing, proves, to honest minds, a source of infinite vexation.

The first thing, therefore, in the university, to which I would call your attention, is the folly of making its members subscribe a religious creed. The absurdity of requiring a subscription to Euclid, or Newton, though in them there is demonstration, would at first sight be apparent ; but, in questions admitting only probability, and which must, in various periods have been received, either on false grounds, or no grounds at all, it is vindicated by men, who pretend to be philosophers and christians. Permit the language of an eminent writer on the most celebrated schools of antiquity, to be applicable to our seats of learning : ‘ The systems, which professed to unfold the nature of god, of man, and of the universe, entertained the curiosity of the philosophick student : and, according to the temper of his mind, he might doubt with the scepticks, or decide with the stoicks, sublimely speculate with Plato, or severely argue with Aristotle.’ What ! if in one year Athens, by the banishment of Epicurus, and his antagonists, silenced all vain disputes concerning the nature of the gods, ‘ in the ensuing year they recalled the hasty decree, restored the liberty of the schools, and were convinced by the experience of ages, that the moral character of philosophers is not affected by the diversity of their theological speculations *.’

* Gibbon’s Decline of the Roman empire. c. 11.

Having releas'd our minds from a worse than egyptian bondage, go on a little farther, and remove another burden, which the folly and superstition of our ancestors impos'd on posterity. The university was founded in the times of popery, when the character of the priesthood, to which the little learning in those ages was in a great measure confin'd, was suppos'd to be sacred. Hence the education of our young men is confin'd, not only in colleges, but in most of our schools, to the clergy. Now what connection is there between a teacher of the mathematicks, or a lecturer on Homer and Aristophanes, with the reader of certain prayers, and explainer of religious doctrines in the churches? Cannot the same discipline be kept up by well-bred men of letters, as by the starch manners of cloister'd life: and are a large wig, a long band, and a black dress, better qualifications for a lecture room, or a college lodge, than the plain dress of an english gentleman? Let it not then be required of a man of letters, to go into orders for academical preferment, but make the rise of an individual depend solely on his progress in literature.

To require men to go into orders, is a relick of popery; a still worse prevails in our universities. The colleges are now the receptacles of protestant, instead of popish monks. It would be an insult on your feelings as men, and your understanding, as rational beings, to dwell a moment on the absurdity of requiring celibacy from fellows of colleges. The only argument now advanced in its favour, is the fear of too tardy a succession, which might be obviated; and, if not, the law of nature is paramount to any made by civil society.

These few things are pointed out to shew you the necessity of some reform. Make the universities in short proper to educate men for the situations which they are to occupy in life, and remove those ridiculous statutes, which, in the present days, no one can obey.

The

The university may be made a great national benefit: the magnificence of its structures, and the extent of its revenues, occasion envy only in little minds, who do not consider, that an individual in the peerage possesses a greater income than that of all the colleges put together; and, instead of diminution, a considerable increase of wealth may be requisite to render them worthy of a rich and enlightened nation.

There is not, I am persuaded, a more sincere friend to the university than myself. I wish to see it flourish; and I lament that such men bear sway in it, as are qualified only to indulge in the repose of a prebendal stall, or an episcopal throne. By the interference of parliament, rewards would be held out to literature alone, and, when the church receives no more encouragement than any other profession, our alma mater will become eminently useful to her country, and cease to exhibit such scenes, as have lately tempted her sons to believe her in her dotage.

A glance at the academical proceedings, contained in the following pages, may suggest some other ideas worthy of a diligent examination. The writing of a book has subjected me to much inconvenience; and I have been condemned without any specifick propositions being pointed out, as contrary to any existing law. The same thing has taken place in other courts, and nothing appears so uncertain as the whole doctrine of libels laid down by parliament, or maintained by the judges. The unusual outcry raised against my publication, made me submit it to two eminent characters, the one in the civil, the other in the common law. The opinion of the former is published in this work; the latter declared that there was nothing criminal in it, but it was impossible to say, in these times, what might be the construction of a jury. Surely the law ought to be definite and clear: tell us what projects *do* are criminal, and

and authours will then know how far it may be prudent to speak the truth. For my own part, I had not the least idea, that a work suggesting improvements in a government, without in the least approaching the constitution, could be an object of censure. I am convinced indeed, that no discouragement should be given to the publishing of speculative opinions: and should a writer attack the constitution itself, the result ought to be, that we should either improve upon his plans, or laugh at him for the badness of his reasoning.

Much clamour has been lately made on the excellence of our constitution; and few people, in talking on this subject, are willing to recollect, that the term itself is a mixed mode, and, until it is defined, disputes, carried on with acrimony on such a subject, shew only the ignorance of the contending parties. The merest child in reasoning knows this; yet the language of men, learned in the law, and eloquent in the house of commons, proves sufficiently, that, either from inattention, or worse motives, they stand in need of being sent again to the first rudiments of science. Every term used in law should be clearly defined, and every case may then be safely entrusted with a jury; but, if the basest arts are used to prejudice the minds of the judges, before a work is submitted to their decision, the situation of writers in Constantinople, or Madrid, is preferable to that in our boasted land of liberty.

In recommending these things to your notice, I am discharging, I trust, the duty of a good citizen; and sincerely wishing, that in these critical times your deliberations may be the means of promoting the common good,

I remain,

With great respect,

Gentlemen,

Your much-obliged fellow-countryman,

WILLIAM FRENCH.

PROCEEDINGS IN JESUS COLLEGE

AND THE

UNIVERSITY.

THE pamphlet, entitled *Peace and Union*, occasioned on its first appearance no small ferment in the university. The fellows of St. John's college were particularly clamorous, and they were joined by that set of men, who, from pretensions to particular sanctity of manners and zeal for orthodoxy, have gained among us the appellation of saints. These two sets formed the majority of the faction, which now goes in the university by the name of the 27, among whom the reader will naturally conclude, that there were several, who, caring little for orthodoxy or sanctity, were zealous to recommend themselves to the ruling powers; and, not being capable of acquiring distinction by any laudable pursuits in the paths of literature, were anxious to intrude themselves by noise and intrigue on the publick notice.

These different parties were employed in disparaging the book, and spreading abroad very unfavourable reports of its authour. They did not hesitate to declare him guilty of a falsehood on a matter of fact, which was well known to thousands within an hour's ride of Cambridge; but, such is the nature of prejudice, they would neither give themselves the trouble of inquiring, nor listen to the attestations of impartial men.

At Jesus college there was a meeting of some of the fellows, who drew up the following paper:

Feb. 22, 1793.

At a meeting of the president and major part of the resident fellows;

Resolved, that a pamphlet, entitled Peace and Union, lately published by W. Frend, M. A. fellow of this college, appears to us to have been written with the evil intent of prejudicing the clergy in the eyes of the laity, of degrading in the publick esteem the doctrines and rites of the established church, and of disturbing the harmony of society. And that, as we feel it to be our particular duty to disavow principles calculated to mislead the minds of young men entrusted to our care, a copy of the said pamphlet be sent both to the vice-chancellor of the university, and to the visitor of the college, inclosed in a letter to each, expressing our disapprobation of the opinions therein delivered, and humbly requesting them to take such measures as in their judgement may appear most proper for the effectual suppression of their dangerous tendency.

W. Mathew.	J. Costobadie.	T. Castley.
J. Plampin.	Tho. Bayley.	

Soon after there was a meeting at the vice-chancellor's lodge of the twenty-seven, all members of the senate, who entered into resolutions to prosecute the authour. In consequence of this transaction the following notes passed between Mr. Frend, Dr. Kipling, and the vice-chancellor.

To the Rev. Dr. Kipling.

Mr. Frend requests that Dr. Kipling would send him a copy of the resolutions made, and the names of the persons who signed them at a meeting held yesterday at Queen's lodge, of which he understands that Dr. Kipling was the chairman.

Tuesday morn. Mar. 5, 1793.

To Mr. Frend.

Dr. Kipling has not in his possession a copy of the resolutions that were made yesterday at Queen's lodge.

Tuesday, Mar. 5.

To the Rev. Dr. Kipling.

Mr. Frend requests that Dr. Kipling would inform him by what means he is to get a copy of the resolutions that were made yesterday at Queen's lodge.

Tuesday, Mar. 5.

To Mr. Frend.

Sir,

The resolutions were deposited in the hands of the vice-chancellor, and I believe that no copy was taken of them by any gentleman at the meeting.

I am, Sir, yours, &c.

T. KIPLING.

To the Rev. the Vice-chancellor.

Mr. Frend having been informed by Dr. Kipling, the chairman of a meeting held yesterday in the house of the vice-chancellor, that the resolutions of that meeting were deposited in the hands of the vice-chancellor, requests the favour of the vice-chancellor to send him a copy of these resolutions, and of the names of the persons who signed them.

Mar. 5, 1793.

To the same.

Mr. Frend, not having received any answer to his note to the vice-chancellor, is apprehensive that it may not have reached him, and must therefore beg leave to renew his request, that the vice-chancellor would favour him with a copy of the resolutions made yesterday at his

lodge, and deposited, as he was informed by a note from Dr. Kipling, in the hands of the vice-chancellor, together with a copy of the names of the persons who signed them. Mr. Frend's interests are so materially involved in these resolutions, that he is anxious both to inspect them himself, and to submit them to the consideration of his friends. On these accounts Mr. Frend trusts the vice-chancellor will think no apology necessary for this trouble.

Mar. 5, five o'clock, afternoon.

To Mr. Frend.

The Vice-chancellor informs Mr. Frend that he does not think himself authorized to comply with his request.

Queen's Coll. Lodge, Tuesday, Mar. 5.

The affair now took a very serious turn, and some severe censures were passed on the twenty-seven in the publick papers; which put the authour under the necessity of writing the following letter to the editor of the Morning Chronicle, who very kindly inserted it in his paper.

To the Editor of the Morning Chronicle.

Sir,

It was with great concern that I read in your paper of Thursday last, an account of the proceedings now on foot in this place against myself as author of a pamphlet entitled 'Peace and Union, recommended to republicans and antirepublicans,' because it is my wish that the publick may be presented with a clear statement of this extraordinary business without an appearance of bias on either side; and the favourable terms in which my name is mentioned excite still more the malice of my enemies, and increase the calumnies to which I have for a long time been subject. It is true, that a party of masters of art, and doctors, met at the vice-chancellor's on Monday last,

last, to deliberate on the mode of attacking me; but the vice-chancellor, as he is to be the judge, declining to be present at the debates, Dr. Kipling took the chair. A committee was appointed, I understand, consisting of Dr. Kipling, Dr. Jowett, Mr. Mainwaring, Mr. Belward, and Mr. Mansell, to draw up articles of accusation; and a general meeting is to be held to-morrow, when they are to be taken into consideration.

As the account of the proceedings on Monday reached me only by report, I wrote on Tuesday morning to Dr. Kipling for a copy of the paper which had been signed by his party, and was by him referred to the vice-chancellor; the vice-chancellor, after two applications to him by note, and several hours delay, returned for answer, that he did not think himself authorized to comply with my request.

In this state affairs rest at present. I shall not renounce any positions in my book, unless some valid arguments (of which to my knowledge not one of the twenty-seven has as yet attempted to produce the least shadow) are adduced in confutation of them. The book will probably soon be published in London, when the public at large may have an opportunity of commenting on the danger of those truths which have excited so great a ferment in the university.

I remain, Sir, your very obedient,

W. FRIEND.

In this situation affairs remained in the university, and the author expecting every moment to be cited into the vice-chancellor's court, did not receive his summons until the 24th of April. But not content with prosecuting him in one court, the faction thought it expedient, that he should have no rest in his own college, and the master, after two days' deliberation with several

several of the fellows, and an intermediate journey to London, to take the opinion of a civilian, appointed a meeting of the college, which he required the authour, by the following note, to attend.

The master of Jesus college informs Mr. Friend that he appoints Wednesday, April 3, at eleven o'clock in the morning, for a meeting of the master and fellows, to take into consideration a pamphlet, entitled Peace and Union recommended, &c. by W. Friend, &c. which meeting the master requires Mr. Friend, if called upon, to attend.

Jesus Coll. Camb. Mar. 27, 1793.

W. PEARCE.

To Mr. Friend.

The attention of the university was now turned to this meeting, and the opinion, which the master had brought down with him from town, was thought by the faction a sufficient ground for expulsion from college. This the master would not permit the authour to have a sight of, though it was shewn by him to his friends out of college, who lost no time in circulating the report through the university, that every thing succeeded to their wishes, and that there could be no doubt of the college co-operating with the twenty-seven in the execution of their designs. The friends of the authour were alarmed; with the energy of that zeal, which throughout the whole of these proceedings have uniformly marked their kindness towards him, they came round him, and entreated him to be no longer passive. They requested him to send the case to a civilian: he considered it as superfluous, conceiving that it required none of the acuteness of a lawyer to understand a plain college statute: but being unwilling to oppose the better judgement of persons, for whom he has the greatest regard, he sent his case to town to be laid before a civilian, and received the following opinion from Dr. Harris.

CASE

C A S E.

The following is a copy of one of the statutes of Jesus college, Cambridge.

De pœna enormiter delinquentium.

Item statuimus ordinamus et volumus quod si quis for-
ciorum aut commensalium sive studentium dicti nostri
collegii incorrigibilis existat vel de perjurio (quod absit)
aut sacrilegio furto rapina vel homicidio adulterio vel
incestu aut alio lapsu carnis enormi aut iniqua violenta
et atroci percussione studentis focii vel quod deterius est
magistri vel in alio quocunque crimine de majoribus et
gravioribus quæ infamiam irrogant reus inventus fuerit
per magistrum vel præidentem et majorem partem soci-
orum ab ipso collegio nostro removeatur et penitus ex-
pellatur.

Mr. Frend, one of the fellows of Jesus college, being
the supposed authour of a tract, entitled ‘Peace and
Union, &c.’ a copy of which is left herewith for your
perusal, and the college intending to take it into consi-
deration, how far they shall be justified in proceeding
against him on the above recited statute, on Wednesday
next, your answer is requested, without loss of time, to
the following question :

“Is the authour of the book, entitled Peace and Union,
&c. liable, on account of any thing written in that book,
to the penalty contained in the above statute, and under
what part of the statute can the authour be proceeded
against?”

The answer of Dr. HARRIS.

The college statute is penal in its nature, and ought
not to be construed more extensively by the members of
a society, than it would by an established court of pub-
lick

lick justice; and penal statutes are always construed strictly in public courts.

The recited statute enables the master or president and the majority of the fellows, which I apprehend to be a majority of the whole number, and understand to be 16, to punish any member of the college, even by expulsion, who is found guilty of perjury, sacrilege, rapine, theft, homicide, adultery, incest, or of any gross misbehaviour or violence toward the master or any of the fellows, and also of any other crimes, which may stamp infamy on the offender.

It is, I presume, clear, that the writer of the pamphlet cannot be accused of the commission of any of the crimes, which are expressly specified in the statute; it can therefore only be asked, whether Mr. Frend, admitting himself to be the author of the pamphlet, can, as such, be said, in consequence of any passage or passages contained in it, to have maintained, adopted, or favoured any doctrine or opinion, which can be justly deemed to be of such nature as to brand him with infamy, on supposition that this statute is not limited to overt acts, and can be extended to tenets.

To this I answer,

That, as the crimes expressly mentioned in the statute, are all crimes of commission, it is to be inferred that the crimes, which are intended to be included under the words, '*quocunque alio crimine,*' are crimes of commission also, and of the same nature with those which are expressed, and imply not the crimes of entertaining and propagating opinions, be they what they may: I have, however, no difficulty in further saying, that on a very attentive perusal of the pamphlet, I have not been able to find any doctrine or opinion proposed, maintained or
favoured

favoured in it, which in my apprehension can, in the judgement of any loyal, moral and christian man, be said to fix a stain on the maintainer of such doctrine or opinion, and much less such a stain as could render him infamous in any legal sense, or in the judgement 'boni et æqui viri.'

After what I have written, it may not be absolutely necessary for me to add more, but it may yet be in point of form expedient for me to say, though it may favour of repetition, that on the fullest consideration of the case, according to the information before me derived from the college statute and the pamphlet, I am strongly led to think, that Mr. Friend can have no reason to be apprehensive of any sort of censure from a majority of a number of literary, well-informed and candid men, such as his college is reputed to be composed of, if they confine themselves in the present instance to the powers given them by the college statute, and to the contents and the general tenor of the pamphlet.

GEORGE HARRIS.

Doctors Commons, 31st March, 1793.

The case and answer the authour put into the hands of the master the day before the meeting, and desired him to lay them before the fellows. This was done in the evening, and on the next day the authour wrote down every thing that passed in the meeting, as far as he was personally concerned, in the following words:

A little before twelve o'clock on April 3, 1793, I was called into the parlour by the porter; and the master, in the presence of ten fellows, shewing me a pamphlet, asked me, whether I avowed myself the author of it. I told him that, by advice of a civilian, I requested the accusation, as I was accused of any thing, in writing.

He told me, that there was no accusation, and should only ask me this question. I replied, that by advice of a civilian I must beg leave to wave any answer to this question. Do you disavow it, said the master. I replied; On the same principle I wave any answer to this question. I was then desired to withdraw.

Between seven and eight in the evening the master again sent for me, and told me in the presence of the fellows, that they had enquired into the proofs of my being the publisher of the pamphlet, and that they were thought satisfactory.

He also read to me the following resolutions:

1st. That several passages in the said pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2dly. That several passages in the said pamphlet have a tendency to degrade, in the publick esteem, the doctrines and rites of the church of England.

3dly. That there is a tendency in the said pamphlet to disturb the harmony of society.

4thly. That the said pamphlet tends more particularly to hurt the credit and interests of this college.

5thly. That in publishing the said pamphlet, Mr. Friend is guilty of an offence contrary to the laws of the college.

These resolutions were made, the master said, by the master and the major part of the fellows.

On being asked, what I had to say in my defence, I requested, that a written copy of the accusation might be

be given to me. Upon which the master desired me to withdraw, that the matter might be put to the vote.

About half an hour after, I was called in again, when the master read to me the following words:

The question being put, whether Mr. Frend should have any charge delivered to him in writing, and it being urged, that Mr. Frend had seven days notice by a summons from the master, of a meeting, for the consideration of his pamphlet, and that the charge was sufficiently implied in the resolutions, that had been read to him, it was carried in the negative.

Being asked then, what I had to say in my defence, I replied, that, without an accusation, it was impossible for me to defend myself, but that I should be exceedingly sorry, to have been guilty either intentionally or unintentionally of several things, contained in their resolutions. I then retired.

About a quarter past nine I was called in again, when the master read to me the following words:

The question being asked, whether Mr. Frend should be again called in, and informed, that the meeting still persist in not delivering a written charge, and that if he will not proceed on his defence, the meeting will proceed without it.

Agreed to.

I then said, that I presumed, I must consider the resolutions as an accusation, and therefore requested, that the passages in the pamphlet might be referred to, with the statutes which I had offended against, and that I would then proceed on my defence. I then retired, and

heard nothing more from the meeting, which broke up about eleven, till the next morning, when I was summoned into the parlour between nine and ten.

The master was going to read something to me, but I requested to see first the proceedings of yesterday. I then retired, and on my return the master informed me, that my request was not granted. I urged, that I had a material objection to propose, but the master refused to hear any thing, saying, that, if I had any thing to say in my defence, I ought to have said it yesterday. I replied, that I was ready to proceed in my defence yesterday, but was desired to retire, when I had requested, that the passages of the pamphlet might be referred to, with the statutes which I had offended against, but was never called in to make my defence. He silenced me, and read the following words from a written paper in his hands:

Is it the opinion of this meeting, that Mr. Friend be removed from the college, that is from the precincts of the college, and from residence in it, till he shall produce such proofs of good behaviour, as shall be satisfactory to the master and major part of the fellows?

In the affirmative	{	The master.
		Mr. Mathew.
		Mr. Plampin.
		Mr. Costobadie.
		Mr. Bayley.
		Mr. Castley.
	{	Mr. Stockdale.

In the negative	{	Mr. Newton.
		Mr. Warren.
		Mr. Whitehead.
	{	Mr. Otter.

And

And agreed by those, who answered in the affirmative, that he may be allowed a month from this time, to settle his affairs in college, the other four not dissenting.

I then withdrew.

It was not likely such arbitrary measures should be complied with, and though the bishop of Ely is visiter of the college, it was thought necessary to comply with the common forms on such occasions, and to appeal to him from the injustice of the master and the six fellows. The appeal was accompanied with the following letter.

My Lord,

The unstatutable proceedings of the master and certain fellows of the college, have put me under the necessity of troubling your lordship with the appeal which accompanies this letter; and I flatter myself that your lordship will see the propriety of my request, that your lordship would suspend the execution of the sentence, against which I appeal, until the matter, now at issue, has received your lordship's determination.

I remain, with great respect, my lord,

your lordship's very obedient

Jes. Coll. Camb.

and humble servant,

April 17, 1793.

W. FRIEND.

THE APPEAL.

To the hon^{ble}. and right rev^d. JAMES, lord bishop of Ely, visiter of Jesus college; the humble appeal of William Friend, M. A. and fellow of the said college,

Sheweth,

That at a meeting of the master and ten fellows of the said college, held on the third of April, the master and a majority of the said fellows supposing the appellant
to

to be the publisher of a pamphlet, entitled *Peace and Union*, concurred in the following resolutions:

1. That several passages in the said pamphlet have a tendency to prejudice the clergy in the eyes of the laity.
2. That several passages in the said pamphlet have a tendency to degrade, in the publick esteem, the doctrines and rites of the church of England.
3. That there is a tendency in the said pamphlet to disturb the harmony of society.
4. That the said pamphlet tends more particularly to hurt the credit and interests of this college.
5. That in publishing the said pamphlet, Mr. Frend is guilty of an offence contrary to the laws of the college.

And, in consequence of these resolutions, without having pointed out the exceptionable passages in the said pamphlet, or the statutes against which the appellant is supposed to have offended, or having even permitted him to speak in his defence, the master and six of the fellows agreed, on the subsequent day, to remove the appellant from residence in the college, as appears from the following words, which the master read to the appellant in the meeting:

Is it the opinion of this meeting, that Mr. Frend be removed from the college, that is from the precincts of the college, and from residence in it, till he shall produce such proofs of good behaviour as shall be satisfactory to the master and major part of the fellows?

The

In the affirmative	{	The master.
		Mr. Mathew.
		Mr. Plampin.
		Mr. Costobadic.
		Mr. Bayley.
		Mr. Castley.
	{	Mr. Stockdale.

In the negative	{	Mr. Newton.
		Mr. Warren.
		Mr. Whitehead.
		Mr. Otter.

And agreed by those who answered in the affirmative, that he may be allowed a month, from this time, to settle his affairs in college, the other four not dissenting.

To prevent the execution of this sentence, passed in so irregular and unstatutable a manner, the appellant humbly requests the interposition of the visiter on the following grounds:

1. Because no exceptionable passages in the said pamphlet were produced.

2. Because no laws of the college, against which the appellant has offended, were pointed out.

3. Because the appellant had no opportunity of vindicating himself from the supposed charges.

4. Because it does not appear from the statutes of the college, that the master and six of the fellows, or any other number less than the majority of all the fellows, are competent to inflict any punishment on a fellow, much less one not expressly warranted by the statutes.

5. Be-

5. Because the sentence of removal from the college is not only not warranted by the statutes, but is clearly inconsistent with that which requires the constant residence of the master and fellows.

W. FRENDE.

The master and five fellows answered the above appeal, and delivered a copy of it to Mr. Frend.

To the honble. and right reverend JAMES, lord bishop of Ely, visitor of Jesus college, Cambridge.

My lord,

We have received from Mr. Frend a copy of an appeal, which he has made to your lordship, from a sentence of a motion pronounced against him by the master and major part of the fellows, for publishing a pamphlet entitled ‘Peace and Union, &c.’ The spirit and contents of the pamphlet considered, we had reason to think that in the sentence pronounced, the lenity of the college was as conspicuous as its justice. But since Mr. Frend has not thought proper to acquiesce in it, we beg leave, in few words, to vindicate our proceedings from the objections which he has made to them.

As Mr. Frend, in the introductory part of his appeal, represents the master and fellows, as only supposing him to be the publisher of the pamphlet in question, we shall lay before your lordship, in the first place, the evidence which was adduced to us in proof of that fact.

Mr. Bowtell, the bookbinder, and his boy, were the first called in. The boy said, that a parcel of books came to Mr. Bowtell by the St. Ive’s carrier, that Mr. Frend came and unbound the parcel, dividing it into two bundles, which, by Mr. Frend’s orders, he carried to the two booksellers, Merrill and Lann, for sale. Mr.

Bowtell

Bowtell confirmed that Mr. Frend was at his house on this business, and that it was on the 12th or 13th of February. The boy added, that he did not carry any books to Merrill's or Lunn's for a considerable time before or after. Lunn's servant was then called in, he confirmed the bringing of the bundle by Bowtell's boy to Lunn's shop, and said that it consisted of Mr. Frend's book called 'Peace and Union,' &c. He farther said, that that morning, April 3d, he brought twenty copies of this pamphlet from Mr. Frend's rooms, at Mr. Frend's request, for sale, one of which pamphlets he produced.

This is a detail of the evidence given to us in support of the fact of publication, by which we were fully satisfied that Mr. Frend was to be considered as the publisher of the pamphlet. The fact of publication being thus established, the first ground of objection taken to the validity of our proceeding thereon is, that no exceptionable passages of the pamphlet were produced.

It is true, my lord, that we declined pointing out particular passages, because our disapprobation was founded not merely on detached passages, many of which are, in our apprehension, of a tendency highly criminal and dangerous, but also on the general tenor and tendency of the whole composition. If your lordship should deem it necessary, that passages should be distinctly pointed out, we shall have neither difficulty nor repugnance in obeying any order which your lordship may be pleased to make upon us to that effect. But we humbly conceive that the whole pamphlet (to which we refer, and which we have annexed to this answer) being submitted to your lordship's view, will remove the necessity of any such selection at present, and fully justify the propriety of having declined to make any such selection at the time of the inquiry.

The next ground is, that no laws of the college, against which Mr. Friend had offended, were pointed out.

In cases of discipline, we apprehend that it is not necessary to point out particular statutes; because if the matter is referred to the visitor, the college avails itself not of one, but of the whole body of the statutes, and also of the general design and intention with which societies of that kind are instituted. The college, we submit, hath, quatenus a college, an inherent right, independently of any express or particular statute, to take cognizance of and punish offences, *contra bonos mores*, committed by its members; and among those offences we believe, no person will have any difficulty in ranking the publication of this pamphlet.

The 3d ground is, that Mr. Friend had no opportunity of vindicating himself from the supposed charges.

It will appear to your lordship from the course of the proceedings, that three distinct opportunities of defence were given to Mr. Friend, which he declined to accept, but upon conditions demanded by himself, to which the college acceded, so far as they conceived those conditions to be founded in justice. The first time that he was called in, instead of entering upon his defence, he demanded a written charge. The second time that he was called in, he would not enter upon his defence, but insisted upon his former demand, though he was told that the charge, which he demanded, was contained in the resolutions which had been read to him, of which he had taken a copy. It was then resolved, that if he would not enter upon his defence without some other charge than that contained in the resolutions, the meeting would proceed without his defence. On being called in a third time, this was declared to him: but instead of attending to it, he made other new demands, which
were,

were, that as by the resolutions read to him, he was accused of certain offences, the passages of the book, in which he had offended, and the statutes against which he had offended, might be pointed out to him; which were refused on the grounds above stated to your lordship in our answer to the first and second articles of objection.

As to the 4th objection, that it doth not appear from the statutes of the college, that the master and six of the fellows, or any other number less than the majority of all the fellows, are competent to inflict any punishment on a fellow, much less one not expressly warranted by the statutes: We answer, that the present sentence was virtually passed by a majority of the fellows; for a majority of the fellows being present at the meeting, and the major part of that meeting having concurred in the sentence, such sentence is valid, and to be considered as passed by the whole meeting, tho' some of the members present should have refused their assent to it, and even expressed their dissent from it. If there should be any doubt of this, upon the face of the statutes, we beg leave to refer your lordship to bishop White's interpretation of them, which is of equal validity.

The last ground of objection is, that the sentence of removal from the college is not only not warranted by the statutes, but is clearly inconsistent with that statute, which requires constant residence of the master and fellows.

In answer to this we must observe, that the statutes confer a power of total expulsion itself, for such acts of misconduct, as are more particularly criminal and offensive. But altho' it were true, that the sentence was not expressly marked out by the statutes, yet we contend, that it was perfectly competent to the college to pro-

nounce it under that general and necessary authority which it possesses in all cases of discipline, whether specifically described in the statutes or not. Temporary amotion is a punishment well known, and is frequent in the practices of all colleges for offences either moral or academical. It is analogous to the canonical punishment of suspension *ab officio*, which is chargeable with inducing the same inconsistency as is complained of in the present case, since the minister is thereby restrained from discharging those duties, which he has solemnly bound himself to perform. It is analogous to most punishments in civil society, which induce, for the time they last, a disability of doing several acts which the guilty person would otherwise be under an obligation of performing. A similar inconsistency to that which is now complained of, occurs between two of our own statutes: the statute *de refectionibus*, cap. 19, says that the fellows shall not be absent from dinner or supper in the hall, *nisi ex causa rationabili, per magistrum et seneschallum approbanda*. And yet the statute *de malis moribus*, &c. cap. 8. requires that a fellow, for certain offences shall be put out of commons. This objection we cannot help observing is somewhat extraordinary, coming from a man in Mr. Friend's situation, since it goes to the lenity of the sentence; for the statutes would have warranted the college in punishing him, by total expulsion, for an offence of such magnitude as that of which he has been guilty.

We have the honour to be, my lord,
Your lordship's most dutiful and most obedient servants,

W. Pearce.

W. Mathew.

J. Plampin.

J. Costobadie.

Tho. Bayley.

Thomas Castley.

The prosecution in the university now took up the attention of the appellant, so that having only cursorily looked over the answer, he wrote to the bishop to excuse himself from replying to it immediately.

My lord,

Mr. Mathew put into my hand yesterday, by your lordship's order, the answer of the master and certain fellows of the college to my appeal. The same motives which led them to condemn me, unheard, in this college, instigated them to make part of a cabal to prosecute me in the vice-chancellor's court, and I have been under the necessity of appearing in that court four days; where, after a strict examination of fifteen hours, the facts have not been proved which they have misrepresented in their answer, and on which, after a few minutes conversation, they took on themselves to pass a sentence wholly irrelevant and unjustifiable in law and equity.

My accusers are expected to finish their charges on Friday next, and I shall be called upon for my defence in the course of next week. Your lordship is sensible that a person who has for the last three months laboured under the pressure of every thing which malice and calumny can suggest, and whose attention has been wearied by the fatigue of observing the wretched tricks which my accusers have used in attacking me, is incapable of sitting down immediately to reply to the master's answer, in a manner worthy of your lordship's notice, and I shall therefore presume to let on your lordship's patience, as to delay the reply till I have completed my defence before the university. As the annals of the university do not present an instance of a persecution attended with so many circumstances of malice and ingratitude, and so contrary not only to the principles of

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of the christian religion, but to every maxim of law and justice, I trust that your lordship will, with your usual kindness, accede to the request of a much injured man, and one, who is with great respect,

Jes. Coll. Camb.

My lord,

May 15, 1793.

Your lordship's very obedient
and humble servant.

W. FRIEND.

The bishop did not condescend to answer this letter, but by his secretary, allowed three weeks, to commence on May 22d, for the drawing up of the reply. Before the expiration of that term another request was made in the following letter.

My Lord,

I am sorry to be under the necessity of making another application to your lordship, to request farther indulgence with respect to the time of making my reply to the paper delivered to me by Mr. Mathew. A plain statement of facts will, I flatter myself, convince your lordship that my request is not unreasonable.

The vice-chancellor's court was broken up last Thursday, after having sat eight days, during which, my attention was necessarily taken up with the proceedings; and the fatigue I underwent might have borne down men of much stronger constitutions. On Friday I appealed to the university, and on Saturday the proctor, in the name of the university, inhibited the vice-chancellor from putting his sentence, which is founded neither in law nor evidence, into execution. I must now prepare myself to appear before the delegates, and not being by any means recovered from the fatigue of
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the last business, your lordship will, I hope, have the goodness to allow me a longer time to prepare the reply to be laid before your lordship.

It is an unusual thing that an englishman should be thus employed in two different courts, on the same subject, and I was once in hopes that my persecuters would have permitted a decision to take place in one court before they proceeded to attack me in another. But as they were resolved to harrafs me to the utmost of their power, I have only to commit my myself to your lordship's protection, and to request that, as to this moment I have not been free from vexation, and am now scarce able to take pen in hand, I may be indulged with longer time, or, if it should be agreeable to your lordship, I could wish to be permitted to delay my reply till the merits of the cause, now pending in the university, have been fully and finally discussed by its delegates. I have the honour to be, with great respect,

My Lord,

Your lordship's very obedient

and humble servant,

Jesus College, Camb. June 3, 1723.

W. FRIEND.

The bishop, in return, answered by his secretary, that he did not think it consistent with a proper attention to the college, and the nature of the business referred to him, to comply with the request. His lordship was, therefore, put to the trouble of receiving another letter.

My Lord,

As the difficulties already mentioned to your lordship have prevented me from giving more than a hasty glance

glance at the answer to my appeal, I am by no means certain what time or trouble will be requisite for the reply. But if I am not in the mean while called upon by the university, I shall do my utmost endeavours that it may be with your lordship by the end of next week. I have the honour to be, with great respect,

My Lord,

Your lordship's very obedient humble servant,

June 5th, 1793.

W. FRENCH.

After this the appellant went into the country for a few days to refresh himself a little from the fatigues of academical strife, and on his return to college took up the answer of the master and his fellows, and, surprized to find it so weak and trifling, drew up, in a couple of days, his reply, which he sent, accompanied with the following letter, to the bishop.

My Lord,

Inclosed is my reply to the answer of the master and five fellows of this college. Had I, on the receipt of it, read it twice over, your lordship would not have been troubled with any requests from me for time to consider it. I remain with great respect,

My Lord,

Your lordship's very obedient humble servant,

June 14, 1793.

W. FRENCH.

The absence, it is presumed, of his secretary, put his lordship to the trouble of writing an answer to the above in the following words.

The bishop of Ely received, by yesterday's post, Mr. French's reply to the answer of the master and fellows of his

his college to his appeal against their sentence. His lordship desires Mr. Frend will deliver a copy of the reply to the master and fellows for their consideration.

June 20th, 1793.

In obedience to this order, as the master was absent, a copy of the reply was given to the president of the college.

R E P L Y.

My Lord,

The answer to my appeal is signed, I perceive, by the master and five only of the fellows, who agreed to remove me from the college: from whence I conclude that the sixth fellow being fully sensible of his error, in acting in so unwarrantable a manner against one of his society, refused to be any farther connected with those by whom he had been misled. I am not surpris'd that the five fellows should praise themselves for their lenity; since they had sent to your lordship an accusation very different from the resolutions entered into at the meeting of the third of April, and had besides been most of them part of a cabal, to deprive me of my degrees, and to banish me from the university. It is no wonder that they should talk of lenity, who regard as of little moment the inconvenience which a man of letters must feel, by being deprived of the calm repose requisite for study, and of access to the rich repositories of learning in this place: but their language in my opinion is insolence in the extreme, and adds insult to injustice.

I have said that the master and fellows supposed me to be the publisher of a certain pamphlet, and they have now laid before your lordship the evidence by which they were guided. It is the boast of englishmen, that the accused person should be confronted with the wit-

nesses, but, as in this instance a different conduct was pursued, it is no wonder that the pretended judges should not only fall into error, but should present with the utmost confidence such error to your lordship.

I do declare, and am ready to attest upon oath, that in the evidence laid before your lordship, there is an absolute falsehood.

The master and the five fellows confess, that no exceptionable passages were pointed out, and, in excuse, refer to the general tenour and tendency of the whole composition. What may be their ideas of the tendency of any work, it is not necessary for me to enquire. I do not conceive them to be competent judges of my writings, nor ever intend to govern myself by their notions of composition. In the most wretched inquisition that the world has ever seen, such a pretext for punishing a man has never been held forth. Some specifick charges have been brought against the accused person, and whether the crimes were real or fictitious, the disciples of St. Dominick carried on the appearance of justice. Even the persecutors of Galileo did not think the tendency of his philosophy a sufficient cause for confining him in prison. They brought forward the charges on which he was condemned, namely, for contradicting the scriptures and violating the laws of the holy see. To remove a man from college on the supposed evil tendency of his publications, is to open a door for the worst of persecutions. The first printed bibles in England were burnt, because of their supposed dangerous tendency, and if this pretext were allowed, students must hereafter shut up their books, lest, if, by a regular attention to college duties, they should offend some of the body who might be notorious for a disregard of all order and decorum, the publishing of a book should render them obnoxious to every species of vindictive malice and resentment.

Under this head, I beg leave to offer to your lordship's consideration the following historical fact, which shews, in the strongest manner, the sense of the whole bench of bishops, on a similar occasion. In 1701, the lower house of convocation took into consideration bishop Burnet's Exposition of the thirty-nine articles of the church of England; and coming to several resolutions upon it, laid them before the upper house, which proceeded, among others, to the following conclusion: 'That the lower house of convocation's censuring the book of the bishop of Sarum, in general terms, without mentioning the particular passages on which the censure is grounded, is defamatory and scandalous.'*

The reason for not pointing out the particular statutes against which I am supposed to have offended, is ridiculous and puerile in the extreme. The statutes are given us as a rule of conduct, and to prevent arbitrary proceedings: I have sworn to obey these statutes, and to submit to a punishment according to the statutes, but not to any other. The college has certainly a right to punish a member for an offence 'contra bonos mores,' but the offence is punishable only according to the statutes. Any punishment, not authorised by the statutes, a fellow of this college is not bound to submit to; and if the master should pretend to enforce it, he does it under the peril of perjury: for he has taken an oath to govern according to the statutes. This subject has been well stated in the protest laid before your lordship by three of the fellows present at the meeting on the third of April. 'We conceive, that the master and fellows have not a power of punishing any fellow of the college, till it is clearly proved that he has offended against some one of the college statutes; and that then they are empowered to inflict only such punishment as the statute requires.'

* See Historical essay upon the government of the church of England, by George Reynold, LL. D. archdeacon of Lincoln. p. 193.

I have said, that I had no opportunity of vindicating myself from the supposed charges; and the master and the five fellows refer your lordship to some course of proceedings, which not having seen I might invalidate, by repeating only my former assertion. But it is very extraordinary that the master and the five fellows should pretend to say, that I had three opportunities offered of making my defence, when three of the other fellows, who were present with them during the whole of the time, declare, as one reason for dissenting from the resolution of removing me from the college, that I had no opportunity given of vindicating myself. Their words are, ‘It appears to us to be repugnant to the principles of justice, and contrary to the rules observed in every court, to pass sentence on any person before he has had an opportunity of answering to the particular charges brought against him, which, in the present instance, was not allowed to Mr. Frend.’ In addition to this evidence, given by three very respectable members of our college, one of whom is a tutor, and exemplary in the discharge of every part of that office, I do declare, and am willing to attest upon oath, that the account delivered to your lordship is founded on a gross misrepresentation.

The master and the five fellows assert, that their sentence, for such they call their resolution, was virtually passed, by a majority of the fellows; and, as a proof, allege, that a majority of the fellows being present at the meeting, and the major part of that meeting having concurred in the sentence, such sentence is valid, and to be considered as passed by the whole meeting, though some of the fellows expressed their dissent to it. The consequence of this reasoning is, That if a master of the college, regardless of his duty and his oath, should make a party amongst the fellows to injure another, should closet some of the fellows, and, by promises, solicitations, or threats, bring them over to his purpose, he may drive
any

any person from the college, of whom, through prejudice, he has conceived a bad opinion, or from whose fall he expects to derive an advantage. But the authour of the statutes was not so inattentive to the liberty and independance of the fellows; he was aware of the abuses which in general prevail in bodies of this sort, and would not permit a person to be exposed to the continual injuries which he might receive from the intrigues of a master, and five fellows. The smaller crimes have punishments assigned to them, to be inflicted by the master or president, and dean: the greater crimes, by the master, and majority of the fellows. Bishop White's interpretation cannot apply to this case; for it was made for the relief of the fellows in certain cases, in which, from the inconvenience or impossibility of assembling all the fellows, the college might be liable to sustain some detriment; but in his interpretation there is no reference to any statute on punishment, and it is confined solely to three statutes which limit certain elections with respect to time. In the present instance, there can be no reason for not expecting the concurrence of a majority of the fellows, if the sentence were justifiable; since the meeting was not confined to any particular time, and the master was vested with sufficient authority to bring all the fellows together. As there was more than a majority of the fellows present, and only six concurred in the resolution of removal, the proper mode of arguing is, that not only those four who dissented from the resolution, but all the rest who did not appear disapproved entirely of the master's conduct, in pretending to call the fellows together on a subject, in which it is evident they thought themselves not at all concerned. For I cannot allow the master and fellows of this college any right to decide on the merits of a work written by one of their body. The statutes give them no such power, and if a fellow of the college should, by printing or publishing, act contrary to the law of the realm, he is in company with other Englishmen,

glifhmen, liable to be brought before the tribunal of juftice.

Inftead of answering my laft objection, and pointing out the ftatute which warrants their refolution of removal, the mafter and five fellows are content with faying, that the college could pafs fuch a fentence under that general and neceffary authority which it poffeffes in all cafes of difcipline, whether fpecifically defcribed in the ftatutes or not. But, unfortunately for them, I have taken an oath to obey, and will obey only in thofe cafes prefcribed by the ftatutes, and the fame oath which obliges me to obey only in certain cafes, is a fufficient proof that the college can demand obedience only in thofe cafes.

The punifhment of a fellow, by a temporary removal from his college, is not known in the univerfity, except in thofe colleges, in which it is enjoined by their ftatutes, and I have good reafon for faying, that the affertion of the mafter and five fellows, concerning the frequent praftice of fuch amotion in the univerfity at large is without foundation. But were this true in other colleges, we are to be governed by our own laws, not by the laws or praftice of any other community. Where the punifhment of removal is ftatutable, the inflicting of it fupersedes the duties required by the other ftatutes. On this principle the fufpention of a clergyman *ab officio*, is perfectly confiftent with his general obligation to difcharge the duties of his office: fuch obligation being only conditional, and dependant on his own conduct, and the judgment of his fuperiour. But would your lordfhip think yourfelf juftifiable in affuming a difcretionary power of banifhing a clergyman from his living, who, by his oath, is obliged to refidence, fuch punifhment not being enjoined by any law of the church? There is no inconfiftency between the two ftatutes pointed out by the mafter, and the five fellows. To make fuch inconfiftency, they

they must suppose, that the fellow, who, in virtue of the latter, shall be put out of commons, is not obliged by the former to dine in the hall at his own expence; or if any such inconsistency should be allowed, it is certainly not a similar one, as it arises from an express injunction of the law-maker. And, if the founder of the college had thought fit, among other punishments, to appoint that of temporary removal, and to add, that it might be inflicted by the master, and six of the fellows, there would be no doubt of the obligation on every fellow to comply with it; but as the master, and the five fellows, have not brought the least shadow of a proof that this is the case, my objection remains in full force.

On the whole, I cannot help observing to your lordship, that the master, and the five fellows, have failed in their answer to every one of my objections. Being sensible of the weakness of their cause, and the badness of their arguments, they pretend to talk of the lenity of their sentence, and of the situation in which they suppose me to be placed. The offence, of which they conceive me to be guilty, is an ideal one; the statutes would not have warranted them in punishing me by total expulsion; and if they had, the exchange of expulsion for a temporary removal, must, on my part, have been optional. So far from giving the master, and five fellows, any credit for their lenity, I conceive them to have done the utmost in their power, for which they imagined that they had the least semblance of a pretext, and the injustice of their conduct is apparent in the total irrelevancy of their sentence. For, what has the publishing of a book, containing speculative opinions, to do with the behaviour of an individual? What misbehaviour could they ever charge me with? What certificate of good behaviour do they require? What proof will satisfy Sir. Plampin, who is a tutor in the college, and notorious for neglect in the most material part of his office, that of giving lectures?

If proofs were requisite, I could bring them signed by the most respectable members of this university, and the first literary characters in the kingdom; and I should have the utmost contempt for myself, if my character could be in the least hurt by any imputation which the master, and the five fellows, have endeavoured to fix upon it. Instead, therefore, of requiring a certificate of my good behaviour elsewhere, let them first produce some proofs of my misbehaviour during my residence among them; and if they could do that in a satisfactory manner to your lordship, the consequences are well known. As to this worse than inquisitorial manner of proceeding, by examining witnesses without confronting them with the accused, by refusing to hear a man in his own defence, by condemning him without pointing out the statute against which he has offended, by passing a sentence which is totally illegal, and has no connection with the supposed crimes, I am persuaded it must be as disgusting to your lordship, and every other liberal mind, as it is to, my lord,

Your lordship's very obedient servant,

W. FRIEND.

On the 16th of July, the master of the college called a meeting of the fellows, and in it read to us a paper which he professed to have received from the bishop of Ely, and on the twenty-sixth of July, it was copied into the order-book of the college, as appears from the following extract:

July 26, 1793.

At a meeting of the master and all the fellows resident in college, Mr. Friend having appealed to the visitor against the sentence contained in the foregoing page, and the visitor having dismissed the appeal, and affirmed the sentence in the following words:

To the reverend the master and fellows of St. Rhadegunde, or Jesus College, in the university of Cambridge,

Gentlemen,

I have carefully perused the appeal of the reverend William Frend*, of your college, against the proceedings had and sentence passed upon him, as publisher of a pamphlet, entitled Peace and Union recommended to the associated bodies of republicans and anti-republicans; by the master and major part of the fellows of your society, together with the answer of the said society, and the reply of the appellant, and the several documents therein referred to, and having duly deliberated thereupon, I dismifs the said appeal, and affirm the sentence of amotion.

I am,

Gentlemen,

Your constant well-wisher,

JAMES ELY, visitor.

July 13, 1793.

Agreed, that if Mr. Frend does not quit the college according to the sentence, that no time should be lost in enforcing the sentence in the manner pointed out by Sir William Scott, in an opinion given by him on this occasion.

W. Pearce, master.

W. Mathew.

Tho. Bayley.

Mr. Frend was not at that time in college, but the master informed him by letter, that on the second of Au-

* Mr. Frend excused the bishop, for giving him a title to which he had no pretensions, and which should be confined to clergymen only.

guft, admission into the college would be denied to him. On that day Mr. Frend returned to college, and about twelve o'clock received an intimation in writing from the mafter, that the college fervants were prohibited from fupplying him in future with any neceffaries. Between three and four he went, according to a previous engagement, into the town to dinner, and foon heard that, immediately upon his going out, the college gates were all fhut. About feven he went down to the college, found the great gate fhut, rang the bell, and, on the porter's opening the gate, walked in, and in a tone of authority, reprimanded the porter for fhutting the gates at fo unfeafonable an hour. From thence he went to the lodge to expoftulate with the mafter on the abfurdity of thefe proceedings, and not finding him at home, left a note, to defire the mafter to declare, whether the gates were fhut by his order or not.

After having thus fhewn his perfect contempt of the mafter's orders, he returned to his friend's houfe, and fpent only one morning afterwards in college. On the twenty-feventh of September, indeed, he intended to revisit the college, but found that Mr. Plampin, from the malignity of whofe zeal nothing elfe could be expected, had taken the precaution to order the gates to be fhut, and an iron chain to be kept acrofs the great door. So contemptible a warfare, muft degrade the authors of it in the eyes of every impartial man: for, if the mafter and his cabal had been confcious of the rectitude of their caufe, there would be no need of chains and locks, to keep out an individual; but having no idea of propriety, or the refpect due to a member of the college, and to the publick at large, they were fatisfied with a wanton exercife of power, and neither their oaths, nor the meaning of ftatutes, came in competition with the meanness or revenge, and the gratification of low intrigue.

With the conduct of these men, it is but justice to contrast, for the credit of the college, that of others, who resisted the violence of their proceedings. The protest sent to the bishop of Ely, by three of the fellows, comes from men deserving of respect, as well for their literary attainments, as the probity of their characters. Though they protested against the conduct of their colleagues, they did not approve of several passages in the obnoxious work, but they made a true distinction, by standing up for the rights of every member of the college, which were so indecently violated by the master and his faction. It is the duty of an authour, to give his sentiments with freedom to the publick ; and the approbation or disapprobation of that publick ought not to be the rule of his conduct. By such a rule, Mr. Frend is certainly not guided, who writes to inform, and to instruct : who knows, that the judgement of cotemporaries is not always the criterion of excellence, or certainty ; and that an attack on prejudices must be subjected to the retort of disapprobation. The protesters had the same right to express disapprobation, as the authour to favour contrary sentiments : those only are in fault, who would injure a man for a difference of opinion. The short interval of twenty years will confirm, or confute the present discordance of opinion on a book, written certainly with the intention of producing general good ; and let it be recollected, in the mean time, that the works of Locke, which are now the text of the university, were once the object of general censure.

Of the three protesters, Mr. Newton is a tutor of the college, and in the exercise of his collegiate and academical duties, has always been a perfect contrast to his colleague. Mr. Newton is assiduous in giving lecture, is attentive to his pupils, is exemplary in his conduct, and employs his leisure hours in literary and philosophical occupation. Mr. White-

head's classical merit was distinguished by academical honours, and he is now the much respected master of Sevenoaks school. Mr. Otter's application to mathematics was crowned with success, and the station he holds in the family of a nobleman, who fills the highest seat in the university of Oxford, is a sufficient proof to those, who know it not from personal acquaintance, of the excellence of his character. On the six fellows in opposition, let others enlarge; but as they took upon themselves to speak in contemptuous language of the behaviour of Mr. Friend, it was necessary to shew, that their conduct was reprobated by the best members of the college. From the three gentlemen above-mentioned, Mr. Friend never solicited the least favour in his cause; their conduct was entirely the result of their own feelings, and will always do them honour; they acted as becomes independent men, who are persuaded, that they have no right to proceed to collegiate censures, unless the infliction of them is authorized by the statutes of the college.

It is now time to return to the university. In consequence of the resolutions made at the vice-chancellor's lodge, Mr. Friend was summoned to appear in the vice-chancellor's court, and during a month, in which there were eight court days, the trial was pending. From the sentence of that court, he appealed to the university; and this step will, to a superficial reader, seem extraordinary, since in his protest, he declared, that there could be no appeal from a sentence founded on the statute on which he was condemned, except to the courts of Westminster-hall*. This is strictly true; and if, after an examination of the supposed offence before the vice-chancellor and heads in the proper place, he had refused to

* See page 6.

comply with their terms, the university could not have interfered : but, as the cause was tried in the vice-chancellor's court, an appeal to the senate was not only strictly in form, but absolutely necessary. Without such an appeal, on application to the court of king's bench, the answer of the vice-chancellor would have been : The cause was tried in the vice-chancellor's court, from which, if any faults have been committed, an appeal lies to the university. Such an appeal would then have been dismissed, with this answer : You ought, according to the statutes, to have appealed, within two days after the sentence ; it is now too late, the sentence of the vice-chancellor is irreverfible.

On these grounds the appeal was made ; but every one was aware, that it could not be otherwife of service, than as preparing the business, if necessary, for the courts above. What probability was there of impartial delegates being chosen ? To omit that they were named by one of the heads, who had co-operated with the vice-chancellor in signing the sentence, the cabal had determined, that no person should be chosen, who was likely to decide with impartiality. Without entering at present on the character of Sir W. Wynne, his office under the executive government rendered him unfit for the charge imposed upon him : and it was not to be imagined, that after the outcry, lately raised against every man of liberal opinions, and artfully kept up by the minions of corruption, a king's advocate, and a privy counsellor, should enter upon the investigation of this cause, with the essential quality of a judge, a mind open to truth, unbiassed by party, and free from prejudice. Mr. Serjeant Hall none improper, as he had not only taken no decided part, but at the very time the petition for a writ of *habeas corpus* was depending on an appeal before the vice-chancellor. It is needless to say any thing, on the conduct of the judges from their connection with the college, or their office in the university ; there was not the least probability of

of judging. Instead of giving, as they ought to have done, their opinions separately, they left every thing to Sir W. Wynne, who, in a speech of considerable length, written, we are to believe, if we have faith enough, after the cause had been heard, gave the unanimous judgment of himself and brethren. How five persons could, within the hours of two and six, examine a variety of papers, concur so easily, and draw up their opinion, must puzzle any one unacquainted with the mode of conducting these affairs: but every seaman in the british navy would rejoice to hear, that the same rapidity of decision were to become the practice in those courts of civil law, which are now permitted to batten on the spoils of victory *.

But it may be asked, what became of Mr. Frend, in consequence of the confirmation of the sentence? He appeared at the commencement as usual, and heard a virulent declamation in bad latin from Dr. Kipling, who, though he can speak scarce ten words together in english, addressed to his jargon a formal prayer to the supreme being on the success of his late labours: while, from his attitude, and eyes fixed on the top of the senate house, the audience conceived, that he was enjoying the raptures of another beatific vision †, and grasping at an ideal mitre, as the reward of his strenuous exertions. The kiplingian harangue had the same effect on Mr. Frend, as on the other hearers; he was called *exul et extorris*; but these epithets seemed rather inapplicable, when the exile was standing at the professor's elbow. This was, however, no fault in the speaker; the speech had been for a long time written down, and the presence of the

* Sir W. Wynne holds a considerable office in the court of admiralty.

† At a former commencement, this angelick doctour, for so he has been called, found a comfort drawn between him and St. Thomas Aquinas, and filled the ways of the university with his accented Latin, to the great joy of his alma mater to her favourite son.

exile was neither expected, nor desired : it was hard, that Mr. Frend should, in defiance of the speech, walk up and down the senate house as usual, and laugh at him and his folly. After a three week's residence longer in college, Mr. Frend retired to the hospitable mansion of his friend Mr. Hammond, under whose quiet roof, he soon recovered from the fatigues of academical warfare.

In this retirement, the uniform support, which he had received from the most respectable members of the university, naturally filled his mind with pleasing reflections. He can never forget the kindness of his three friends, Mr. Tyrwhitt, Mr. Lambert*, and Mr. Jones†. They accompanied him into court, sat down at his table, assisted him with their advice, and enabled him to oppose with fortitude the attacks of the cabal. Their characters stand much too high in the opinion of the university, to be elevated by any commendation in this place; but it may be permitted to say, that all good men rejoiced, and the bad were abashed, at seeing their ability and integrity opposed to the spirit of persecution and meanness. The ill health alone of Mr. Marsh‡, prevented him from being of the number: but the step, taken by him in an early stage of the business, though unauthorized by Mr. Frend, proved the sincerity of that friendship, which had been long cemented between them. To Mr. Reynolds§, thanks are justly due, who, on the day of defence, put on his gown again, and, by sitting at the table of the accused party, gave another testimony of that zeal for the cause of liberty, which has uniformly charac-

* Senior fellow and bursar of Trinity college.

† Bursar of Trinity college.

‡ Fellow of St. John's college, who on the 22d of April 1759, was elected to his late seat in parliament.

§ R. Key, Esq; Barrister at Law, and Recorder of London.

mated him through life : and his nephew * is intitled to similar acknowledgements, for numberless kind offices during the whole of the trial. To enumerate all the testimonies of regard which this cause excited, in favour of an injured man, would appear ostentatious ; but they will always live in a grateful memory, and both console him for the troubles which he has undergone, and rescue the university from the opprobrium, to which, from the conduct of the twenty-seven, it must otherwise for ever have been exposed.

The publick is now left to form its judgement on the proceedings both of the college and the university : it is incumbent only on the accused party to state briefly the reasons for his mode of defence. Being firmly persuaded, that the attack made on him, was the result of faction and intrigue, he was not to be awed by the superiority of numbers, nor the treachery of the assailants ; but, leaving them to the use of those arts, which a mind formed for literature must always despise, he was resolved not to decline the combat, but to enter the lists at the proper time, armed with confidence in the justice of his cause, and a knowledge of the laws of the university. On these principles he obeyed the summons into the vice-chancellor's court ; but by his protest, and by stopping the proceedings of the first day, he made it evident, that both the judge, and the accusers, led away by the desire of gratifying revenge, were little qualified for their respective offices ; and, at the same time, he confounded the murmurs which had been artfully raised by his enemies, and too easily acquiesced in by some of his friends, that he ought to come forward boldly, and avow himself the author of the work. These objecters did not consider, that he came into court on a summons which

* Mr. Laurence Reynolds, B. A. of St. John's college.

he supposed illegal; that the articles of accusation answering to an indictment in the common proceedings of law, were not known to him till he appeared in the court; and that it would have been absurd to determine the particulars of his conduct, or to have made them known, before he had seen of what he stood accused. He therefore availed himself of the law of the university, which very properly orders, that the accusation should be delivered on the first, and that no witness should be called till the second, court day. Of this law the vice-chancellor and the accusers had till that time probably never heard; and they did not see the propriety of it, both from their ignorance of the civil law in general, and their inattention to the circumstance, that the defendant receives a copy of the articles only on the first day of appearance.

There was not a person in court who entertained the least doubt that Mr. Friend was the authour of the book in question; but as the cabal had no right to interfere with his publications, except they had the ability to answer them, he determined, that, in endeavouring to prove this point, they should expose their folly to the utmost. That they failed in their endeavours, is no wonder; and that the learned accuser should make so contemptible a figure, when he came to the obnoxious passages in the book, did not surprize any one, who had seen him in the pulpit at St. Mary's, or in his chair in the divinity schools. The charges are contemptible in the extreme, and do not attack those points, on which Mr. Friend might have reason to expect the censures of the church: and, in perusing his defence, the reader is to carry in mind, that the reply is made to the propositions in the articles; and though the authour should manifest a variety of sentiment, which his accusers may think inconsistent to the Parate, still, if they are not expressed in the article, they cannot be made the ground-

for punishment. Thus, on the charges relating to idolatry, and ecclesiastical ranks, the answer in plain language given in court was, that they were false; and on more mature deliberation, the authour repeats his declaration, and calls upon the twenty-seven to vindicate themselves; and if they have the least spark of honour remaining in them, or regard for their pretended character of men of letters, to reply to the papers on this subject delivered into the vice-chancellor's hands. The other two charges on the liturgy, and the most sacred offices of the church, do not come within the statute, but they are equally entitled to the epithet bestowed on the two former articles. Mr. Friend's objections to the church of England are on very different grounds from those stated in the articles; and he quitted it, not on account of its ranks, or courts, not on account of its offices, not on account of the less important defects of its liturgy, but because the church worships the trinity, and recites a creed under the name of Athanasius, which appears to him a monstrous compound of various fragments of metaphysicians and philosophers.

But it has been objected, that the defence should have been conducted in a more serious manner. Had the cause related to the serious concerns of religion, a different mode of conduct would have been pursued; but, from the nature of the case, it was scarcely possible to retain throughout a serious countenance. Did a painter wish to describe persecution in the most ridiculous and at the same time the most odious light, could he choose a better attitude and better colours than those of the promoter before the senate? The english are famous for that species of humour called caricature, but the chief inquisitor with his groupe of familiars, delineated to the life, would exceed the boundaries of the art. The natural insignificance of Jowett, the impotent irascibility of Mainwaring, the blustering of Belward, and the self-importance of Mansell, it is in vain to look for words to express.

express. The idea in the speaker's mind was to hold them up to the ridicule and contempt of the audience: to its ridicule, for acting the parts they had undertaken in so absurd a manner; to its contempt, for presuming to disturb the peace of the university with their paltry contentions, and, for the sake of ingratiating themselves with the higher powers, to aim at the ruin of an individual. But, in giving this salutary discipline to such characters, he had an eye to a very important part of the community, and he wished to impress deeply on their minds the folly and wickedness of every attempt, to deprive men of the liberty of canvassing opinions with freedom, and to take away the rights of a studious man, because he communicated his sentiments with the publick. Imperfect as the execution was, the audience went away in general with a lively sense of his leading ideas: on the judges he did not expect to make an impression; for their plan was already formed, and not an angel from heaven, no, not any person but a prime minister could have produced a change in their resolutions.

The proceedings of the two courts are given from official papers received from the registry and bedell, and notes taken down by Mr. Lambert. Mr. Friend's speech was written down by himself a few days after the delivery of it, and, though his memory is not very tenacious, he has been enabled by the notes of Mr. Lambert to give not only the order and leading ideas, but in general the very expressions used. The reader will naturally make allowances for a composition confined to the rules of speaking, not of writing, two very different things, and recollect that the latter is to the former what an engraving is to a picture. The inverted commas, the parts omitted by the registry, and the official paper, are printed exactly as they were delivered, excepting that the names of the heads of houses are omitted and

the first day, because no other alteration took place in them than that Dr. Postlethwaite was absent on the 11th, 13th and 17th of May, and Dr. Peckard made his appearance only on the 28th of May. To the defence of Mr. Frend, Dr. Kipling's reply, and the vice-chancellor's speech at the conclusion of the business in his court, the inverted commas are omitted. They are also omitted in the account of the proceedings before the delegates, the only official papers in that court, being the *acta curiæ* the protests of Mr. Tyrwhitt and Mr. Frend and the citation: the rest was supplied by the attention and friendship of Mr. Lambert.

That at the close of the eighteenth century there should be found members of the church of England and of the university of Cambridge, capable of carrying on a prosecution on questions of controversy, is matter of extreme regret to the publisher of this work, as it must be to every liberal mind; and, if it were not with the view of deterring every future effort of bigotry and intrigue, he could wish, for the credit of his country and his university, that the proceedings, which this publication contains, were buried in oblivion. A protestant establishment should disdain the use of coercive measures, and if attacked should defend itself by the force of reason, not the arm of compulsion. But, as long as religion is made a stalking horse to places of preferment, neither learning nor philosophy will prevent many of its advocates or pretended advocates from uniting in the vulgar cry against any one, who assumes the right of thinking for himself and rejecting the dogmas of the prelatist party. Though the twenty-seven are in general very deficient in literary merit, and have still less claim to theological distinction, philosophy feels herself degraded in fixing the name of a Wollaston associated with men of such inferior characters and grovelling minds; and the distinguished exertions of the father in the cause

of religious liberty render more striking the son's apostasy. From one, whose early years were employed in the laborious occupation of mechanick life, the manners of a gentleman and the taste of a scholar are not to be expected, and the disadvantages under which he laboured, sufficiently account and apologize for these defects in the character of a Milner, while they enhance the admiration of powers, which, without meliorating the heart, have distinguished his pursuits in abstract science. It is not to be wondered at, that he should join in an attack on the freedom of the press, which however arose from and was pursued by men with very small pretensions indeed to literature or philosophy : and the little encouragement they received, will, it is to be hoped, prevent any similar attempts in future. For, however branded the french may now be for atheism, the common opprobrium of the early christians, the new article in their code, prohibiting a distinction to be made in civil rights on account of religious questions, must from the nature of things be in no distant period adopted not only in this but in every country of the world. Then will a future generation scarce credit the report, that a celebrated university was employed, like a spanish inquisition, eight days in investigating the question, whether one of its members, for publishing some remarks on ecclesiastical affairs, should be subjected to the sentence of banishment.

PROCEEDINGS

IN

THE VICE-CHANCELLER'S COURT.

ACTA CURIÆ.

At a court holden before the right worshipful
ISAAC MILNER, D. D. vice-chancellor of the
university of CAMBRIDGE, and LOWTHER YATES,
JOHN SMITH, WILLIAM CRAVEN, FRANCIS BARNES,
JOHN BARKER, JOSEPH TURNER, THOMAS POSTLE-
THWAITE, RICHARD FARMER, D. D. and JOHN
FISHER, LL. D. his assessors, between the hours
of ten and one, on Friday the third day of May,
in the law-schools of the said university, me
present,

Geo. BORLASE,
Not. Publ. and Regist.

The five of judges
present, viz. The
Vice-Chancellor, D. D.
William Farmer, D.
A. M. and John
Fisher, LL. D. } **O**N which day a summons, here-
tofore issued against William
Frend, A. M. and fellow of Jesus
college, was returned by John Be-
verly, esquire bedel, who made oath that the same
had been personally served on the said William Frend.

B

Mr.

Mr. Frend appeared: and the court was adjourned to the senate-house. Dr. Colman appeared at the adjourned court; when and where Mr. Frend excepted to the court, in a certain paper, purporting to be a renunciation of the jurisdiction of the said court; which paper he read and signed in the presence of the registry, who attested the same, and delivered it to Mr. vice-chancellor. Mr. vice-chancellor, after deliberating with the assessors, pronounced for the jurisdiction of the court, and ordered Dr. Kipling to bring forward his charge. Mr. Frend desired that the renunciation might be entered on the records of the court, and that the grace, ‘*Cum statutis academix*,’ Oct. 24, 1609, might be read; part of which was read by Mr. Frend, Mr. vice-chancellor objecting to the reading the whole at that time, and saying it might be read in the course of his defence. Dr. Kipling desired that the charges may be exhibited in writing, which was allowed; and the said charges or articles were read, and a copy of the same was ordered by Mr. vice-chancellor to be delivered to Mr. Frend, and was so delivered. The first article the defendant denied, so far as concerns the cause in question; which denial was over-ruled by the court. Mr. Frend asked Mr. vice-chancellor, whether it was over-ruled with the concurrence of the heads. Mr. vice-chancellor declared that it was over-ruled, and is now over-ruled, with the concurrence of the heads.

The second article was then read, and Dr. Kipling proposed to call witnesses. Mr. Frend objected to the calling any witnesses until the *secundus dies juridicus*, and read a part of the grace, ‘*Cum statutis*,’ &c. beginning at the words, ‘*secundo die juridico*,’ to the words, ‘*per reum datis*,’ and required time to answer, according to the statutes. Mr. vice-chancellor de-
clared

clared that the demand made by Mr. Frend, as founded on the grace aforesaid, was not good; nevertheless he judged it reasonable to allow him proper time to prepare himself, and accordingly adjourned the court to be holden at the senate-house, on Friday the tenth instant, at ten o'clock in the morning, and warned Dr. Kipling and Mr. Frend then and there to appear.

C I T A T I O N.

To JOHN BEVERLEY, WILLIAM MATHEW, and HENRY GUNNING, esquire bedels of the university of CAMBRIDGE, or their lawful deputy or deputies.

SUMMON WILLIAM FREND, master of arts, and fellow of Jesus college in the university of Cambridge, to appear before me, or my lawful deputy, and my assessors, at my next court, to be held in the law-schools in Cambridge, on Friday the third day of May next, between the hours of ten and eleven in the forenoon of the same day, in a certain cause of office promoted by the reverend Thomas Kipling, doctor in divinity, and member of the said university, the said cause of office or matter of complaint arising within the jurisdiction of the said university; then and there to answer to an accusation laid before me, in which the said William Frend is charged with having violated the laws and statutes of this university, (particularly the statute de concionibus) by publishing and causing to be dispersed, within the said university, a certain pamphlet, intitled 'PEACE AND UNION RECOMMENDED TO THE ASSOCIATED BODIES OF REPUBLICANS AND ANTI-REPUBLICANS,' of which doctor Kipling, the above-mentioned promoter of this cause, affirms him to be the author,

and in which, according to the accusation of the said doctor Kipling, religion, as established by public authority within this realm, and also all ecclesiastical ranks and dignities are impugned; and so from court day to court day until the said cause be ended, and further to do and receive as to law and justice shall appertain. Hereof fail not at your peril. Given under my hand and seal, at Queen's College, Cambridge, this twenty-third day of April, in the year of our lord one thousand seven hundred and ninety-three.

(Signed)

I. MILNER, (L. S.)
Vice-Chancellor.

JOHN BEVERLEY.

[Copy.]

“On the vice-chancellor's calling upon Dr. Kipling to open the cause as promoter, Mr. Frenn addressed the court in the following words, of which he afterwards delivered a copy, legally executed, into court.”

“MR. VICE-CHANCELLER,

“I desire leave, before my accuser enters on his office, to offer a few things in the way of objection to the mode of trial adopted by him, and authorized by you: they will, I hope, be found not unworthy of your attention.

“I acknowledge the receipt of a citation from you to attend in this place at this hour, and my presence here is entirely owing to that circumstance; but I wish it to be considered as proceeding more from civility and respect, than duty or obligation: the reason of which distinction will be obvious from what I am going to allege.

“My

“ My accuser charges me with the publication of a pamphlet, intitled, ‘ Peace and Union recommended to the associated bodies of republicans and anti-republicans:’ and, by such publication, with impugning religion as established by publick authority within this realm, and also all ecclesiastical ranks and dignities: and by such impugning, with having violated the laws and statutes of this university, particularly the statute de concionibus,

“ Now the violation of the statute de concionibus being made the principal charge against me, I apprehend that I ought not to have been cited to appear in the vice-chancellor’s court, but before the vice-chancellor and a majority of the heads of colleges, all offences against that statute being made cognizable by him and them jointly: and that there is no instance of any person being cited to appear here for such an offence. The difference between the vice-chancellor’s court and a meeting of the vice-chancellor and a majority of the heads of houses, I suppose to consist in the following particulars:

“ I. The vice-chancellor’s court subsists by ancient custom, and charters confirmed by an act of parliament, and ought to be held at stated times for the purpose of receiving complaints, and hearing and determining causes. Whereas the other meeting derives its existence and authority wholly from queen Elizabeth’s statutes, and, from the nature of it, can only be occasionally assembled, in the same manner that the same or other persons meet occasionally in the senate or other place, for the execution of other parts of the same statutes.

“ II. The vice-chancellor’s court is a court of record, from which no appeal can go to any of the courts in
West-

Westminster-hall, but only to the senate of the university. Whereas I apprehend that no appeal can go to the senate from a determination of the vice-chancellor, and heads acting under the statute de concionibus; though such determination, like that of a mayor and aldermen in any civil corporation, may be liable to a review in the court of king's-bench.

“ III. The vice-chancellor, sitting in his court, possesses the power of punishing all offences cognizable in it, without the concurrence of a majority of the heads of houses, such concurrence being in no case necessary to enable him to punish, but only to punish in a particular manner. Whereas in the exercise of the power given in the statute de concionibus, such concurrence is in every step made absolutely necessary.

“ IV. The immediate object of a citation into this court is punishment: whereas the immediate object of a citation before the vice-chancellor, and a majority of the heads, under the statute de concionibus, is not punishment, but the revocation of error.

“ V. There is no pretence from the statute, nor from any practice under it, for the appointment or allowance of a promoter, such office being peculiar to ecclesiastical courts.

“ VI. The vice-chancellor has undoubtedly, in his court, the power of compelling evidence, and that upon oath; neither of which can, I suppose, be done by him and a majority of the heads, assembled for the purpose of enforcing the statute de concionibus.

“ For these reasons, at least till stronger ones to the contrary shall be alledged, I think myself obliged to re-
nounce

nounce the jurisdiction of this court, and do hereby renounce such jurisdiction, so long as the violation of the statute de concionibus is made the principal or any part of the charge against me. And though I should, in the first instance, have willingly submitted to answer for any supposed breach of that statute, before the vice-chancellor, and a majority of the heads of houses, or before the vice-chancellor in this court, for the breach of any other law of the university, properly cognizable in it, I now desire time to be advised whether, having been wrongfully cited to appear in this court on a supposed offence against that statute, with the acquiescence at least, if not the approbation, of the heads of colleges, I am any longer liable to a trial for the same offence, either before the vice-chancellor and heads, under the statute so often mentioned, or by the vice-chancellor alone, under any other law and statute of the university.

“ The vice-chancellor, after a consultation with the commissary, retired to the gallery with the commissary and heads of colleges: in about half an hour they returned, and the vice-chancellor pronounced for the jurisdiction of the court. Mr. Frend then desired that the grace passed in 1609, on the order to be observed in the university courts, might be read; to which the vice-chancellor objected, saying, it might be read when Mr. Frend came to his defence. Mr. Frend urged the necessity of reading it now, as it directed the whole proceedings of the court: but the vice-chancellor desired the promoter to proceed.

“ Then the promoter rose, and Mr. Frend, rising at the same time, addressed the vice-chancellor, and desired that the accuser might not be permitted to speak till he had put on his proper academical habit. At this

a violent burst of laughter and clapping from the audience ensued. The vice-chancellor seemed vehemently moved, and looked up to the gallery, as if going to reprimand the young men; but the burst was over, and the noise had ceased before the vice-chancellor could speak to order.

“The promoter said, that the vice-chancellor, he supposed, would be required next to put on his robes too. The vice-chancellor treated Mr. Friend’s requisition as frivolous; and Dr. Kipling began by praying, that the charges might be accepted in writing, and a copy of them, with a copy of the pamphlet annexed, given to the defendant. This was allowed, and the charges were read by the promoter.”

UNIVERSITY of CAMBRIDGE, May the 3d, 1793.

In the name of God, Amen. We Isaac Milner, doctor in divinity, vice-chancellor of the university of Cambridge, and judge of the court of the chancellor, matters and scholars of the said university, lawfully constituted and appointed, to you William Friend, master of arts, and one of the fellows of Jesus college in this university, do give and minister all and singular the articles, heads, or interrogatories under-written, for certain crimes and offences said by you to have been committed, but more especially for having written, published, and caused to be dispersed within the said university, a book or pamphlet, intitled ‘Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Friend, M. A. fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Crest, St. Ives, 1793, (Price One Shilling.)’ In which said book or pamphlet religion, as established by public authority within this realm, and also all ecclesiastical
ranks

ranks and dignities, are impugned: at the promotion of the reverend Thomas Kipling, doctor in divinity, and a member of this university: and we do object and article as follows, (that is to say)

In the first place, We article and object to you the aforesaid William Frend, that the university of Cambridge was founded and endowed, and by act of parliament, made in the thirteenth year of the reign of queen Elizabeth, was incorporated by the name of the chancellor, masters, and scholars of the university of Cambridge, for the maintenance of godly literature, and the virtuous education of youth within the said university; and moreover, that the letters patent granted to the chancellor, masters, and scholars of the university of Cambridge, in the third year of the reign of our then sovereign lady queen Elizabeth, and all other letters patent, granted to the said university by any of the progenitors or predecessors of our said queen, were by the said act of parliament declared to be thenceforth good, effectual, and available in law, to all constructions and purposes: and we object and article the premises, jointly and severally, and every part thereof.

2d. Also, We article and object to you the aforesaid William Frend, That in this present year of our lord one thousand seven hundred and ninety-three, you did publish, and cause to be dispersed within this university, a scandalous book or pamphlet, of which you are the author, intituled, Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793; which said book or pamphlet is annexed to these presents, and prayed to be admitted as if inserted herein: and we article and object as above.

3d. Also, We article and object to you the aforesaid William Frend, That in the twenty-ninth page of the aforesaid book or pamphlet you have defamed the public liturgy of the established church, by affirming that ‘ it is very far from the standard of purity in doctrine, which is required in such compositions :’ and we article and object as above.

4th. Also, We article and object to you the aforesaid William Frend, That in a paragraph, contained in pages thirty-six, thirty-seven, and thirty-eight of the aforesaid book or pamphlet, beginning at the words, ‘ The same passions,’ and ending with the words, ‘ episcopal convocations, you affirm that the publick worship of the great body of christians is idolatrous ; including in this charge the members of the church of England, as evidently appears from the context : and we article and object as above.

5th. Also, We article and object to you the aforesaid William Frend, That in the thirty-ninth page of the aforesaid book or pamphlet, you have asserted, that ‘ ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity :’ and we article and object as above.

6th. Also, We article and object to you the aforesaid William Frend, That you have profanely reviled and ridiculed the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers, in the following passage contained in the thirty-ninth and fortieth pages of the aforesaid book or pamphlet, (that is to say) ‘ The laity, like brute beasts, sit tamely under this usurpation : a man, if a priest or minister enters, is not master of his own house ; he must not thank God for the blessings of providence at his own
table;

table; he cannot pledge his faith to a lovely woman without the interference of the priest; his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home without another incantation.

‘ These superstitious prejudices are, without doubt, highly beneficial to the interest of the clerical community; but the morals of neither party are consulted. The laity are apt to imagine that there are some practices in which they may be indulged without any imputation on their christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his clothes:’ and we article as above.

7th. Also, We article and object to you the aforesaid William Frend, That at the time of publishing the aforesaid book or pamphlet, you was a master of arts and member of this university, and that you now are a master of arts, and a fellow of Jesus college in this university, and therefore notoriously subject to the jurisdiction of this court: and we article and object as above.

8th. Also, We article and object to you the aforesaid William Frend, That by the laws and statutes of this university, particularly by the forty-fifth statute, intitled, ‘ De Concionibus:’ and by a decree passed in the senate of this university, on the ninth day of June, one thousand six hundred and three, it is ordained and provided, That all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion or by banishment: and we article and object as above.

9th. Also, We article and object to you the said William Frend, That of and concerning the premises, complaint hath been and is rightly and duly made by this party, promovent to this court and the judge thereof.

Wherefore the party promovent in this cause prayeth right and justice to be done and administered to him effectually; and that the said William Frend, in regard of his great rashness and presumption in the premises, may be duly corrected and punished as the law requires.

“ The articles having been read, Mr. Frend objected to article 1st, as far as it concerned the cause in question. The vice-chancellor declared that objection already over-ruled by the court.

“ Q. from Mr. Frend. By your own authority, or conjointly with the heads?

“ V. C. By my own, and the heads as my advisers.

“ Q. Did they concur with you?

“ V. C. They did.

“ Q. Do they now? The vice-chancellor turned to the bench, and now asking the heads, declared, They concurred before, and do now.

“ The second charge was read by the promoter; and HARVEY ALGER being called as evidence, Mr. Frend objected to the calling of any witnesses in the part of the promoter on this day, and read a part of the grace of 1609, which directs that the witnesses should be called only *secundo die juridico*.

“ The

“ The vice-chancellor said, it was not necessary to comply literally with that grace. Being asked by Mr. Frend, on what account, the vice-chancellor said, That the difficulty of observing it would be very great; that it never had been accurately observed; that it would clash with some of the statutes, and particularly it would limit the power of summary proceedings. Mr. Frend still urging the propriety of its being strictly attended to, was asked by the vice-chancellor, Do you then insist on the promoter’s witnesses not being called till the second day?

“ F. I do.

“ V.C. Do you wish for time to prepare your defence?

“ F. I wish for all the time allowed me by the statute. The commissary then interposed, and said, These witnesses might be admitted now by the first part of the statute. On being asked by Mr. Frend, What part? he said, That this delay was dispensed with, if the cause was *levior et ordinaria*. Mr. Frend asked, Can that cause be called one of the *leviores*, which may drive the accused from the university, and deprive him of his degrees? The commissary answered, That the distinction between *leviores* and *graviores causas* did not arise from the magnitude of the consequences, but from the ease or difficulty of proof.

“ F. If you allow it to be a *causa levior*, your proceedings, to be sure, may be summary. The promoter observed, the appointment of a second day seemed intended as an indulgence to the actor, to prepare, &c. but this indulgence he did not desire, and was ready to proceed now. Mr. Frend replied, I do not know that the actor is meant to be particularly indulged in this grace. I conceive it to be for the benefit of all parties; and as such I do desire that the time may be allowed,

lowed, and that the actor may be required to proceed according to law.

“ V. C. You desire time, then, for your defence ?

“ F. I desire the time allowed by law.

“ The vice-chancellor then retired with the commissary and heads, to the lobby ; and after remaining rather longer there than on the first journey, returned, and desired the registry to read his notes, which were then altered, in various instances, by the commissary. A long conversation now took place between the vice-chancellor and commissary ; after which the vice-chancellor, addressing Mr. Frend, said, that though he did not think his demand for time, as founded on the statute good ; yet, as he judged it reasonable to give him time to make his answer, it was allowed : and the court adjourned till Friday, May 10th, ten in the morning, in the same place.

“ Mr. Frend desired the court would understand, that he did not, in this demand, mean to make his defence that day : it was appropriated to the examination of the promoter’s witnesses, and to that business only he should expect the court to attend.”

ACTA CURIÆ.

At a court holden, &c. between the hours of ten and four, on Friday the tenth day of May, &c.

ON the opening of the court, the judge asked Mr. Frend, if he was now ready to answer to the charges laid against him. Mr. Frend declared, that he did not
come

come with the idea of answering to the charges this day, but that he was ready to act according to the laws of the university, and referred again to the grace, (page 369.)

On which the vice-chancellor said, that as Mr. Frend, on the last court-day, urged the necessity of adhering strictly to the grace, 369 p. and, according to his own explanation of what is there stated, he thought it expedient now to explain his ideas concerning the meaning and authority of it. The vice-chancellor then gave his reasons at large in support of the present proceedings, and explained, according to the best of his judgment, in what sense this grace is to be considered as obligatory, and in what sense its authority could not be admitted. He said, this court had unquestionably authority to proceed more or less summarily, and in the present instance he did not yet perceive the shadow of a reason for departing from the usual practice. He added, that he was ready to listen with the utmost attention and patience, as long as any thing could be advanced on either side. His object was to do substantial justice, and he exhorted both the accuser and the accused to use no unnecessary delay.

Question from Mr. Frend. Whether the judge meant to proceed according to the statute ‘*De Concionibus*’ simply, or whether that statute made a part of of the law under which the judge was now proceeding?

Answer. The judge certainly considered himself as not acting under that statute separately; but as part of the law under which he would proceed.

Question from Mr. Frend. Whether the judge said this from his own authority, or with the assent and consent of the heads?

Answer.

Answer. He did not think it necessary to answer that question repeatedly.

Mr. Frend then protested against the court now proceeding, as, he said, there was not now present with the vice-chancellor a majority of the heads; and therefore he could not proceed to take examination on oath, as long as the statute ‘De Concionibus’ is made a part of the statutes on which the accusation is founded.*

Dr. Kipling then read the second article; and the vice-chancellor asked Mr. Frend, whether he admitted or denied the same.---Answer. That he had before denied them all generally, asserting them to be false, wicked, and malicious.

Witnesses were then called on the part of the promoter, viz. Harvey Alger, Philip Life, Rev. Thomas Lloyd, A. M. John Bowtell, and Rev. Charles Dickins, LL.D. and the same were sworn and examined, and were also cross-examined by Mr. Frend: and the court was adjourned to to-morrow the 11th instant, at twelve o’clock.

FIRST WITNESS EXAMINED, 10TH MAY, 1793.

Harvey Alger was called by the promoter, and sworn; and a book being put into his hand, deposed as follows:

Question. Did he ever see that book before?

Answer. Yes.

Q. Whether he purchased it of any one?

A. Yes.

* Dr. Postlethwaite, master of Trinity college, was absent on this day.

Q. Of whom?

A. Of Mr. Lunn, the bookfeller.

The commissary asked, "Is that the book that was delivered to Alger?"

A. "Yes.

Q. "Has it been in his possession?"

"Mr. Frend observed, that it ought never to have been out of court, and conceives that the commissary must join with him. Nothing was said in reply."

Q. About what time?

A. On Friday 19th April, 1793.

Q. Who delivered that book into his hands?

A. Mr. Lunn's journeyman.

Q. How does he know that to be the very book he received from Mr. Lunn's foreman?

A. By having marked it on the cover, and by an L for Lunn.

Q. Did he make these marks before he delivered the book out of his hands?

A. Yes.

Q. Can he say, on his oath, that that is the very pamphlet he delivered into Dr. Kipling's hands the last court-day?

A. Yes.

Q. How does he know it to be the very same?

A. By the letter L, which he knows to be his handwriting; "and there are other marks."

Q. Whether he looked at the letter L particularly, when he delivered the book into Dr. Kipling's hands the last court-day?

A. Yes.

D

Q. Did

Q. Did he look at it again, particularly when Dr. Kipling returned it to him.

A. Yes.

Q. Had it been in possession of any other person besides himself, since the former court-day?

A. No.

Q. by the commissary. "At what time was it delivered to you?"

A. "At the close of the business in court."

Q. from the court. Where does Mr. Lunn live?

A. In Trompington-street.

Q. to Dr. Kipling. "Have you any more questions to ask?"

A. "Not any very material or necessary now."

Q. Can he read?

A. Yes.

Witness was ordered to read the title of the said pamphlet, and read as follows: "Peace and Union recommended to the associated bodies of republicans and anti-republicans: by William Friend, fellow of Jesus college, Cambridge. Printed for the author, by P. C. Croft, St. Ives, 1793. Price one shilling."

Q. "from Dr. Kipling." Did he deliver the same book into Dr. Kipling's hands this morning, as he came into court?

A. Yes.

Mr. FRIEND cross-examined the said witness.

Q. Whether the witness is not Dr. Kipling's servant?

A. Yes.

Q. For

Q. For whom did he purchase this book?

A. For Dr. Kipling.

Q. With what intention?

A. By Dr. Kipling's desire. "When Dr. Kipling ordered me to buy it, he did not say what was his intention."

Q. When he made the two marks?

A. He made them "in the kitchen" before he took the book to Dr. Kipling.

Q. Why he was induced to make those marks and letter before he gave the book to Dr. Kipling?

A. By Dr. Kipling's order.

Q. How long did it remain in Dr. Kipling's possession after the first delivery?

A. About two days.

Q. Who delivered it into the witness's possession at the end of the two days?

A. Dr. Kipling.

Q. For what purpose did Dr. Kipling deliver it to the witness?

A. Dr. Kipling desired him to lock it up.

Q. Did Dr. Kipling assign any reason for its being locked up?

A. No.

Q. Did the witness keep it locked up?

A. Yes.

Q. With what intention did he keep it locked up?

A. With no other intention than by Dr. Kipling's order.

Q. By whose order did he take the book from the place when it was locked up?

A. By Dr. Kipling's order.

Q. Did he bring the book to court the last court-day by Dr. Kipling's order?

A. Yes.

Q. Was this book produced in court?

A. He gave it to Dr. Kipling in the senate-house yard before he came into court, but cannot say what became of it after.

Q. Why it could not have been out of his possession between the last court-day and this?

A. Because he locked it up as soon as he went home, and has always had the key in his possession.

PHILIP LIFE, foreman to Mr. LUNN, was sworn, and deposed as follows:

Question. Does he know that servant of Dr. Kipling's, who was just now examined?

Answer. He knows him by sight.

Q. Does he recollect ever delivering to that servant a pamphlet, intituled, "Peace and Union," &c. by William Frend.

A. He does.

Q. Does he recollect about what time he delivered it to him?

A. He does not.

Q. Can he say whence that pamphlet came which he delivered to Dr. Kipling's servant?

A. He cannot.

Q. Had

Q. "Had Mr. Lunn any of those pamphlets in his shop on the 19th of April last, except the twenty copies which the witness himself had received from Mr. Frend?"

"This question was over-ruled by the vice-chancellor and Mr. Frend, as putting words into the mouth of the witness. Mr. Frend said, he prompted the last witness, and is now prompting this."

Q. Did he ever receive any copies of the pamphlet, intituled, Peace and Union, &c. by William Frend, A. M. from Mr. Frend himself?

A. He did.

Q. How many copies?

A. Twenty copies.

Q. On what day?

A. Third of April last.

Q. Had Mr. Lunn any copies of this book at that time unfold?

A. Not that he knows of.

Q. Did Mr. Lunn, to the witness's knowledge, procure any copies of this pamphlet from any other quarter, between the third and nineteenth of last April?

A. Not that he knows of: at least he did not go for any.

Q. At what place did he receive those twenty copies of the pamphlet from Mr. Frend?

A. At Mr. Frend's rooms in Jesus College.

Q. Why did he go thither for any copies of the pamphlet?

A. He applied to Mr. Bowtell for some copies; but Mr. Bowtell had none; but Mr. Bowtell told him, that Mr. Frend had them all.

Q. Was

Q. Was he directed by Mr. Lunn to go to Mr. Bowtell for some copies?

A. He was.

Q. What did he say to Mr. Frend, when witnesses went first to Mr. Frend's chambers?

"Mr. Frend asked the court, whether such questions were proper. Dr. Kipling insisted upon the question being asked, and it was therefore asked."

A. He cannot say exactly what the words were. The purport of them was, that he presented Mr. Lunn's compliments to Mr. Frend, and, having sold all the copies of his pamphlet which he had, would thank him for fifty more copies.

Q. Does he recollect whether he asked Mr. Frend for copies of his pamphlet?

A. He does.

Q. Did Mr. Frend make any answer, and what to him, on that occasion?

A. As near as he can recollect, Mr. Frend said, that he did not think he had fifty copies: but that Mr. Lunn should have all he had.

Q. "Did Mr. Frend, immediately after this, deliver you any copies?-----The commissary thought this a leading question; and therefore the promoter asked,"

Q. What did Mr. Frend do immediately after this?

A. When he went to Mr. Frend's rooms, he was not in them. Some little time afterwards he saw him standing in the court; when he went up to him, and delivered the message, which he has repeated as near as he could recollect. He then went to Mr. Frend, into his room, when he delivered to the witness twenty copies of the pamphlet, intitled, "Peace and Union."

Q. What

Q. What did witness do with the twenty copies of the pamphlet?

A. He brought them home to Mr. Lunn's shop.

Q. "I think you said, you told Mr. Friend." Witness mentioned to Mr. Friend, that Mr. Lunn had sent him for more copies of the pamphlet, because Mr. Lunn had then none remaining in his shop,---was this a part of Mr. Lunn's message, or not?

A. As near as he can recollect, it was.

Promoter. "I will explain the purport of my question in a few moments. I wish to know whether Mr. Lunn had any unfold on April the 3d. When first asked the question, he seemed uncertain; he now speaks positively that he had not."

Mr. Friend asked, "Why he remembered the day when he came to his rooms?"

A. "Because I gave Mr. Friend credit in Mr. Lunn's ledger on that day.

Q. "By whose instructions did you take the memorandums now in your hand?"

A. "They are only dates. Mr. Lunn thought it proper for me to take them down."

REV. THOMAS LLOYD, A.M. was called.

"Before Mr. Lloyd was sworn, Mr. Friend asked the court, whether a party in the accusation could be admitted as an evidence in the cause, and proceeded,---I understand that Mr. Lloyd, now standing in this court, was one of the twenty-seven, or of the number which assembled at the vice-chancellor's house, and there entered into certain resolutions respecting this cause. By which resolutions Dr. Kipling, Dr. Jowitt, Mr. Mansell,

fell, Mr. Belward, and Mr. Mainwaring, were appointed managers, as I understand, to carry on in their names this prosecution: a copy of which resolutions I requested Dr. Kipling to send me; but he returned me answer, in writing, that he had them not. I sent a second note to Dr. Kipling, to desire to know by what means I might procure a copy of these resolutions. He returned me answer, in writing, that they were in possession of the vice-chancellor. I wrote, between the hours of twelve and one on that day, to the vice-chancellor, and receiving no answer, I wrote again, between five and six, requesting, that as my interests were very much involved in these resolutions, I might be favoured with a copy of them. Between seven and eight the vice-chancellor sent me word, in writing, that he did not think himself authorized to comply with my request. I now again make that request; considering the production of that paper as necessary to the conducting of my defence in the prosecution of this cause, and being fully convinced, whether those resolutions are to any purpose or not in themselves, that a very bad use has been made of them by the twenty-seven, to prejudice me in the eyes of the publick, and of the university.

“The vice-chancellor turned to the commissary, and after some little conversation, addressed Dr. Kipling.

“Dr. Kipling, Mr. Frend desires to see the resolutions: have you any objection to the production of them?

“Answer. I leave it to the discretion of the court. Court replied, The court cannot direct the conduct of any of the parties. Dr. Kipling, (after a little pause) Am I to give a decisive answer? I see no reason why he should not: I am willing that he should.”

Vice-

Vice-Chancellor. " I see none. I believe I sent next day to Mr. Frend, that as soon as a regular accusation was formed, I would send them*. I called a meeting of the heads, and it was their opinion that I should not."

Commissary. " I will take Mr. Frend's objection fully. Mr. Lloyd is no accuser before the court, and therefore a competent witness."

Mr. Frend asked: " Mr. Vice-chancellor, is this with the concurrence of the heads?" Answer. " They do not object."

" Mr. Lloyd appeared with a pamphlet in his hand, and was sworn."

Question. What pamphlet is that which he holds in his hand?

" Mr. Frend observed, that this looked like connivance. It seemed as if the promoter had directed the witness to bring the book, that the promoter might ask him what it was."

Answer. A pamphlet intitled, Peace and Union: by William Frend, Fellow of Jesus College.

Q. Did he purchase it, or was it given him?

A. He purchased it.

Q. Of whom?

A. Of Mr. Lunn, the bookseller.

Q. Did he purchase it before the third of April, or after?

A. After that date.

Q. How long after that date?

A. On Thursday eighteenth of April.

* Mr. Frend never received the message.

Q. Can he say, on his oath, that is the very pamphlet he bought in Mr. Lunn's shop?

A. He can.

Q. Did he receive it from Mr. Lunn himself, or his foreman?

A. From his foreman.

Mr. FREND cross-examined the witness.

Q. Was there any agreement between the witness and the promoter to appear with a pamphlet?

A. He was asked by Dr. Kipling, if he had any objection to appear, and had none. "It was a voluntary act." The same principle which led him to petition for the prosecution, led him also to take the part which he now does in it. He had no objection to purchase a pamphlet for the express purpose of appearing against Mr. Frend, and to bring home the charge, "and convict him of publishing."

Q. Was there any agreement between witness and Dr. Kipling, concerning a regular plan of purchasing, keeping, and exhibiting the pamphlet before this court?

A. Dr. Kipling "certainly" suggested to him to take every proper method for identifying the pamphlet, and qualifying himself as a witness on this occasion.

Q. Whether he was one of the twenty-seven, or a greater or less number, who met at the vic-chancellor's, and entered into certain resolutions respecting this cause?

A. He has the honour of being of that number, and thank Mr. Frend for making that known.

Q. Did he vote for Dr. Kipling being chairman on that occasion?

A. He did.

Q. Did

Q. Did he the witness debate on the mode of prosecution on that occasion ?

A. The plan was not finally settled on that occasion : there certainly was a debate.

Q. By whose direction did the witness go to the house of Mr. vice-chancellor on that day ?

A. He thinks it was in consequence of a message from the vice-chancellor, but is not very positive, and believes it was.

Q. Did witness vote for the five managers ?

A. He does not think it came to a regular voting.

Q. Were they nominated ?

A. There were names mentioned.

Q. Was there any question of depriving Mr. Frend of his property, at that meeting ?

A. He rather thinks that it was hinted by some present, that a prosecution might go to that, but that it was not a necessary consequence ; and the question was, Whether the college might not, on account of the university's prosecuting, proceed to exclude him from his fellowship ? but he does not pretend to be accurate. " He cannot answer for his memory, as he did not come to answer this."

" Mr. Frend. Certainly : I suppose you came for a very different purpose."

Q. Was it not said, that to deprive Mr. Frend of his property, was a matter of comparatively small moment ?

A. He does not recollect that remark.

" Mr. Lloyd gave in his copy, and the promoter desired that it might be identified to be a duplicate of that already in court."

Mr. LIRE called in again.

Question. Whether he recollects a pamphlet being sold to Mr. Lloyd, intituled, Peace and Union.

Answer. He does.

Q. Does he recollect whether it was sold to him after the third of April, or before?

A. He thinks after.

Q. from the court. How comes he to recollect selling that pamphlet to Mr. Lloyd?

A. By Mr. Lloyd's writing his name in it.

Q. Being shewn a pamphlet, and asked if that was the same.

A. It was like it, but he was not sure that it was the same, and that he has no circumstance fixed in his memory which will enable him to say, with certainty, that the pamphlet was really sold to Mr. Lloyd after the third of April; and did not remember that it was dated; and the pamphlet's being dated is the sole circumstance which leads him to suppose that it was sold then.

Mr. FRENCH cross-examined the witness.

Q. Why he remembers the day when he said he came to Mr. French's room?

A. Because he gave Mr. French credit for twenty copies in Mr. Lunn's ledger.

Q. By whose instructions he took the memorandums he has in his hands?

A. Mr. Lunn directed him to take those memorandums.

Witness

“HARVEY ALGER” witness again examined by Dr.
KIPLING.

Q. Is he in possession of a copy of the pamphlet intitled, Peace and Union, by Mr. Frend.

A. Yes.

Q. Where did he purchase it?

A. Of Mr. Bowtell.

Q. About what time?

A. Friday nineteenth of April last.

Q. from Mr. Frend. Whether he bought a second copy by direction of Dr. Kipling?

A. He bought both books by direction of Dr. Kipling.

JOHN BOWTELL, sen. called and sworn.

Question. Does he recollect selling a copy of a pamphlet intitled, Peace and Union, by Mr. Frend, to Dr. Kipling's servant?

Answer. He does.

Q. From whom had he that pamphlet?

A. From Mr. Frend.

Q. Did he go to Mr. Frend's chambers for it?

A. No.

Q. Where then did Mr. Frend deliver it to the witness?

A. I received it from Mr. Frend in the witness's house.

Q. Did Mr. Frend bring it himself to the witness's house?

A. No.

Q. Who then brought it to his house?

A. It came to his house in a parcel directed to Mr. Frend.

Q. Does

Q. Does he know from whence that parcel came?

A. He does not.

Q. What did that parcel contain, besides that one copy sold to Dr. Kipling's servant?

A. It contained that pamphlet, and several other duplicates.

Q. How does he know that it contained several other duplicates of that pamphlet?

A. He saw them when the parcel was opened.

Q. Who opened that parcel?

A. Mr. Frend himself.

Q. How long had the parcel been in his house, before Mr. Frend came to open it?

A. He does not now recollect whether Mr. Frend came the same day on which he opened it, or not; but it was on the same day or the following day.

Q. Did Mr. Frend deliver that one copy aforesaid, with some others, to be sold for him?

A. He did.

Q. Did he give the witness any commission about the remaining copies?

A. He does not recollect that he did.

Q. Did he give no directions to send any copies to Mr. Merrill or Mr. Lunn?

A. He does not recollect that he gave the witness any.

Q. Did witness hear Mr. Frend give any directions to the witness's servant?

A. Mr. Frend did.

Q. To inform the court what those directions were?

A. Mr. Frend directed the witness's servant to take
one

one of the inclosed parcels to Mr. Merrill: another inclosed parcel was directed to be taken to Mr. Lunn.

Q. from the court. Were any of the parcels under cover?

A. They were tied up, and the titles together; the titles faced, so that no print was seen: the ends of the pamphlets were blank.

Q. How did he know that these pamphlets were copies of the pamphlet, intitled Peace and Union?

A. He does not know that they were pamphlets intitled Peace and Union.

Q. Does he know that the pamphlet, now produced by Dr. Kipling's servant, was the pamphlet sold by him?

A. He does not know that that was the pamphlet.

Mr. FEND cross-examined the witness.

Q. Whether he has not sold for Mr. Fend a variety of books of various authors, addressed to the witness or Mr. Fend, in parcels from London?

A. He has.

CHARLES DICKENS, LL. D. was called by the plaintiff, and sworn, and deposed as follows:

Question. Whether has he in his possession at present the pamphlet, intitled Peace and Union, &c. by William Fend, which was shewn to him by a friend of his about a week ago, and containing an appendix in two parts?

A. Yes, He has.

Q. To produce it in court.

A. He is ready to produce it. He did produce it.

Q. Of

Q. Of whom had he that pamphlet?

A. "From my old friend and acquaintance Mr. Frend. I saw him at a bookfeller's shop at St. Ive's: he was going to send out some of them. (Interrupted by the court.)" Of Mr. Frend.

Q. Did he make a present of it?

A. Mr. Frend said, that he designed to send him one, and took up that one which he has in his hands, "I said, no one shall see this till it become publici juris."

Q. How does he know that that is the very book he took up?

A. "Hicce oculis video;" and he knows it by his own hand-writing in it,
"Sunt bona, sunt quædam mediocria, sunt mala plura," which I translate,

"Do you expect a perfect work to see?

"You ask what never was, nor is, nor e'er shall be."

Q. Dr. Dickens was desired by Mr. Frend to read what is written in the end of the pamphlet, in Dr. Dickens's own hand-writing. "The court was inclined to reject it; but on Dr. Kipling's desire it was read. Trojani equi fabricator was said to be Epeus. I don't know that, nobody knows."

A. He read, *Siste per fidem*, at the bottom of the
stairs,

Nolo per Jovem, faith good Mr. Eyres,
Nil dictum quod non dictum sit prius.

ACTA CURIÆ.

At a Court, holden, &c. between the hours of twelve and six, on Saturday the eleventh of May, 1793, &c.

CERTAIN resolutions respecting this cause, by which Dr. Kipling, Dr. Jowett, Mr. Manfel, Mr. Mainwaring, and Mr. Belward, were appointed managers to carry on, ‘in their names,’* this prosecution, were read.

Dr. Kipling desired that the two pamphlets, yesterday produced in court, the one by Harvey Alger, the other by Dr. Dickens, might be examined by the court, that the court might be satisfied that the same were duplicates, excepting an appendix annexed to the latter.

John Bowtell, jun. Philip Life, John Bowtell, sen. William Henry Lunn, Elizabeth Everfden, John Merrill, Thomas Wagstaff, Thomas Watfon, A. M. Edward Kilvington, A. M. John Plampin, A. M. and Thomas Newton, A. M. were sworn and examined, Mr. Friend having first protested against the evidence of Edward Kilvington, A. M. as having signed the resolutions aforesaid: and certain letters, or notes, marked A, B, and C, addressed to Mr. Watfon, fellow of Sidney college, were read, and also answers to the same, marked a, b, and c.

The court was adjourned to Monday next, at ten o’clock.

“The vice-chancellor holding a paper in his hand, addressed Dr. Kipling; You consented that a copy of these resolutions should be given to Mr. Friend?”

Dr. Kipling answered. I did consent that Mr. Friend might have a sight of them.

* ‘In the original,’ was left on the table, and having been taken away, was not in this matter forwarded in the court of doctores.

The papers were then delivered to Dr. Kipling, who after looking at them and a short consultation with the other four managers, said, they contain nothing we are ashamed of; yet I am unwilling to gratify an impertinent curiosity.

The papers were then delivered into court and publicly read."

CAMBRIDGE, QUEEN'S COLLEGE, MARCH 4th, 1793.

RESOLVED by the under-written persons, members of the university of Cambridge, that William Frend, M. A. and fellow of Jesus college, be prosecuted in the vice-chancellor's court, for having publicly and notoriously offended against a grace, passed by the senate of this university in the year 1603; and that the following gentlemen be a committee to manage the said prosecution, viz. Dr. Kipling, Dr. Jowett, the Margaret professor of divinity, the public orator, and the reverend Mr. Belward, fellow of Caius college:

T. Kipling	Geo. Whitmore	A. Frampton
J. Jowett	W. Mathew	E. Kilvington
J. Mainwaring	E. Bradford	E. Outram
W. L. Marshall	J. Oldershaw	R. Tillard
R. Belward	W. Wainford	W. Pugh
	W. Wade	W. Walker
	J. Plamplin	F. J. H. Wollaſton
	H. Jowett	Wm. Haſton
	J. Smith	W. Wilton
	J. Collobadie	
	J. Wood	
	Tho. Salmon	
	H. Green	
	G. King	
	T. Lloyd	
	R. Randalen	

"Mr. Friend. Dr. Dickens only spoke to a fact in Huntingdonshire, with which this court has no concern."

JOHN BOWTELL, jun. sworn, and deposed as follows.

Question. Do you recollect seeing Mr. Friend, a few weeks ago, open a parcel in Mr. Bowtell's house, containing some pamphlets?

A. Yes.

Q. Did Mr. Friend deliver any of those books or pamphlets to you?

A. He left some there for me to take out.

Q. Did he himself give you any directions about them?

A. Yes.

Q. What were those directions?

A. To take one parcel to Mr. Merrill's, and one to Mr. Lunn's.

Q. Did you see the title-page of any of those pamphlets?

A. Of some that laid loose.

Q. What was the title-page, as nearly as you can recollect?

A. "I do not know, but I think," Peace and Union.

Q. Do you recollect any person's name in the title-page?

A. Mr. Friend's.

Q. Were you directed to carry out any of those pamphlets that were lying loose?

A. Yes.

Q. Who gave you those directions?

A. Mr. Friend.

Q. To

Q. To what gentleman did he direct you to carry them?

A. To Dr. Edwards.

Q. To any other persons?

A. To Mr. Lambert, to Mr. Marsh.

Q. Were you to deliver any message along with the pamphlets?

A. I do not remember that I was.

Q. To whom did you deliver that parcel which Mr. Frend ordered you to carry to Mr. Lunn's?

A. To Mr. Life.

Q. Who is Mr. Life?

A. Mr. Lunn's journeyman.

Q. Can you tell how many pamphlets were in that parcel?

A. They were tied up in fifties, and he took one parcel.

Q. To whom did you deliver that parcel which Mr. Frend directed you to carry to Mr. Merrill's?

A. To Mr. Merrill's maid.

Q. Do you know her name?

A. No.

Q. Can you recollect her person when you see her again?

A. No.

"Vice-chancellor. Should you know her?"

A. "No."

Q. From the court. Do you know what those pamphlets were which you delivered to Mr. Lunn's journeyman, and Mr. Merrill's maid.

A. No.

PHILIP LIFE sworn.

Q. Do you recollect ever receiving from John Bowtell, jun. a parcel containing fifty pamphlets, or thereabouts?

A. I do.

Q. Did you open that parcel yourself?

A. I cannot charge my memory whether Mr. Luna or I opened it.

Q. Did you see the parcel opened?

A. I saw it when it was open.

Q. What were the contents of it?

A. It contained fifty copies of a pamphlet intitled, Peace and Union recommended to the associated bodies of republicans and anti-republicans.

Q. Was there any persons name upon the title page?

A. Yes. Mr. Friend's.

Q. What might be the interval of time, or nearly so, between your receiving that parcel and seeing it opened?

A. I saw it opened the same evening it was brought.

Q. Are you sure that the parcel of pamphlets that you saw open was the very parcel that you received from John Bowtell?

A. I am sure.

Q. Did John Bowt II, jun. deliver any message to you along with that parcel?

A. He said it came from Mr. Friend's.

Q. Did he say for what purpose?

A. I do not recollect that he did.

Q. Have

Q. Have any of those pamphlets been sold in Mr. Lunn's shop?

A. Yes.

Q. How many?

A. The whole fifty.

Q. On what authority did you undertake to sell those books?

A. I cannot say, it was Mr. Lunn's order they should be put into the shop for sale.

Q. Have any more copies of the same pamphlet been sold in Mr. Lunn's shop?

A. Yes.

Q. How many more?

A. About seventy.

Q. Do you know where those seventy copies came from.

A. I went for fifty of them to Mr. Bowtell's house, and for the other twenty to Mr. Friend's room.

Q. Did you receive the fifty copies yourself from Mr. Bowtell?

A. I did.

Q. And what did you do with them?

A. Brought them home to our family.

Q. Are all those fifty copies sold?

A. They are.

Q. Were they all taken to Mr. Friend's chambers for the purpose of being sold?

A. I believe that they were, I speak with my certainty.

“Dr. Kipling observed to the court, the other twenty, you will remember, were proved to have been brought from Mr. Friend’s rooms.”

Q. Do you know whether any more copies of the same pamphlet were brought into Mr. Lunn’s shop for sale?

A. I never saw any after the twenty copies I received from Mr. Friend.

Q. Do you then believe that no more than those hundred and twenty copies, which have been just mentioned, were ever exposed to sale in Mr. Lunn’s shop?

A. I do.

Q. (from Mr. Friend.) At what time the sale of these pamphlets began at Mr. Lunn’s?

A. Somewhere about February the thirteenth last.

JOHN BOWTELL, sen. sworn.

Q. Did you ever deliver fifty copies of the pamphlet intitled Peace and Union, &c. to Philip Life, Mr. Lunn’s foreman?

A. I do not recollect that I did.

Q. Do you recollect whether Philip Life ever came and asked you for some copies of that work?

A. No I do not remember that.

Q. Do you recollect ever giving any parcel of books to Philip Life, Mr. Lunn’s foreman?

A. I have no recollection of it.

Q. Did not Mr. Friend leave several copies of the pamphlet intitled Peace and Union, and so forth, in your house, to be distributed to others, who might ask for the work?

A. He did.

Q. Did

Q. Did you make an entry in your account books of the number of copies which he lent you for that purpose?

A. I believe I did.

Q. Have you kept an account, in the same account books, of the persons names to whom you have delivered copies of that work, and of the number of copies that you have delivered to each person?

A. I have only the name of Mr. Friend.

“Dr. Kipling. He cannot understand the question, which was therefore repeated.”

A. I have no account of any person to whom I have sold them.

Q. You told the court, yesterday, that you saw Mr. Friend open a parcel which contained many pamphlets. You have also told the court that several of those pamphlets were left in your own possession. Have you kept no account of those pamphlets?

A. No I have not.

Q. Are they all in your own possession still?

A. None of them.

Q. Tell the court to what persons you recollect having delivered some of them.

A. I think I recollect sending fifty copies to Mr. Friend, unfold.

Q. Tell the court the names of all the persons to whom you have sent parcels of those pamphlets?

A. I sent none. I saw them go. Mr. Friend sent them.

Q. How many copies did you send to Mr. Lunn?

A. I sent none.

Q. Do you mean to deny, that Philip Life ever had fifty copies, from you, of the pamphlet intitled Peace and Union, &c. by Mr. Friend.

A. No.

Q. Do you think that he never had that number of copies of the pamphlet so intitled, from your house?

A. I might deliver them, but I do not recollect it.

Q. You have said, that you never sent any of those pamphlets yourself to Mr. Lunn's, but that you saw fifty of them go. By whom were they carried to Mr. Lunn's?

A. By my servant, John Bowtell, jun.

Q. Who directed him to carry them thither?

A. Mr. Friend.

Q. What message did Mr. Friend send along with them?

A. I do not recollect any particular message.

Q. Did he send no message?

A. He said, take them to Mr. Merrill, and Mr. Lunn, this is all I recollect.

WILLIAM HENRY LUNN sworn.

Q. Your foreman has told the court, that he received a parcel, containing fifty pamphlets, from John Bowtell, jun. that he does not recollect whether he or yourself opened that parcel; do you recollect by whom it was opened?

“Mr. Friend asked the court, whether such prolegomena were allowable in questioning a witness? The court disapproved of them.”

A. I have no recollection of that circumstance at all.

Q. Do

Q. Do you recollect that a parcel containing fifty pamphlets, intitled Peace and Union, and so forth, by William Friend, was left in the month of last February at your house?

A. I have a perfect recollection of their being left, but cannot speak as to the time; but my ledger will prove it.

Q. Did you deliver them to your foreman for sale in the shop, or give him any directions for that purpose?

A. I do not recollect.

Q. By what authority then do you suppose they were sold in your shop?

A. As coming from Mr. Bowtell by Mr. Friend's order.

Q. Had you any more copies of the same pamphlet from Mr. Bowtell?

A. I sent for more when the first were sold.

Q. How many were brought?

A. Fifty.

Q. Had you sold the whole hundred copies which you say you received from Mr. Bowtell, before the third of April?

A. I cannot say.

Q. Had you sold them all when you sent for some more copies from Mr. Friend?

A. I think they were all sold. I will not say positively.

Q. What more copies of the same work have you ever received for sale?

A. Twenty copies.

Q. From whom did you receive those twenty copies?

A. I received them by my agent, in consequence of a message I sent to Mr. Friend.

Q. Had you ever any copies of the same pamphlet for sale, in your shop, besides the hundred copies you had from Mr. Bowtell, and the twenty copies you had by your journeyman "from Mr. Friend's chambers?"

These latter words were withdrawn by direction of the commissary."

A. No.

Q. Do you believe that those hundred and twenty copies are the only ones that were ever brought into your shop for sale, and that you have sold no others?

A. I do.

ELIZABETH EVERS DEN sworn.

Q. "Do you remember seeing that boy? (pointing to Bowtell, jun. who had been detained at the bar.)"

Q. Do you remember ever seeing John Bowtell, jun.

A. I do not.

Q. Do you recollect receiving a parcel of books or pamphlets from a person of about that size?

A. Yes.

Q. To whom did you deliver that parcel?

A. To my master, Mr. Merrill.

Q. Did you see that parcel opened?

A. No.

Q. Did the person, of whom you received that parcel, deliver any message with it?

A. He told me they were pamphlets to be sold for Mr. Friend.

Q. Did

Q. Did he tell you from whence they came?

A. No.

Q. Do you recollect about what time you received that parcel?

A. No.

Q. Can you tell how long ago?

A. She cannot say.

JOHN BOWTELL, jun. again examined.

Q. Do you recollect delivering a parcel of pamphlets which you received from Mr. Frend, to Elizabeth Everfden, Mr. Merrill's servant?

A. Yes.

Q. Do you now recollect her person?

A. Cannot tell.

"Mr. Frend observed, if Dr. Kipling has any objection in future to determine personal identity, I must desire that he be not permitted to point out the person to the witnesses, but that they be left to discover it; as I believe is usual in all other courts."

JOHN MERRILL sworn.

Q. Do you recollect receiving from your maid servant a parcel containing fifty pamphlets, intitled Peace and Union, and so forth, by W. Frend, with a message purporting that they were to be sold for Mr. Frend?

A. Yes.

Q. Were those pamphlets when you received them, put up so that the title pages could not be seen?

To this question Mr. Frend made objections, which the court finally allowed."

Q. Now

Q. How were those pamphlets put up?

A. I cannot recollect they were put up in any particular order.

Q. Were the title pages visible.

A. I do not remember they were visible, they had titles.

Q. Did you open the parcel yourself?

A. Yes.

Q. What were the titles of those pamphlets?

A. Peace and Union, by William Friend, &c.

Q. Have you sold any of those pamphlets?

A. Yes.

Q. Do you recollect whether, at the time you received them, each pamphlet had an appendix to it?

A. Yes they had.

Q. Did you sell any copies with the appendix to it?

A. Yes.

Q. Have you since that sold any without the appendix?

A. Yes.

Q. By whose authority was the appendix cancelled?

“Objected to by Mr. Friend; but ordered as asked for no purpose but to prove the pamphlet, with the appendix, written by Mr. Friend.”

A. By Mr. Friend's.

Q. Did Mr. Friend authorise you, in person, to cancel the appendix?

A. Yes.

Q. Did

Q. Did he direct you, in person, to sell the pamphlet without an appendix?

A. I do not recollect that he did.

Q. Did he give you no directions whatever, in person, about the sale of those pamphlets?

A. I do not remember that he did.

Q. "To whom do you intend to pay the money you have received, or may receive, for the sale of this book?"

Mr. Friend objected to this question; the commissary thought it not improper; however it was changed."

Q. To whom have you given credit in your books for the money you have received for the copies of the pamphlets that are sold?

A. To Mr. Friend.

Q. Did you send a copy of the said pamphlet to the Master of Arts coffee-house?

A. I did.

Q. Do you recollect by whom you sent it?

A. I do not.

Q. from the court. At what time did you receive this parcel from your servant?

A. February the thirteenth last, as appears by entry in my books.

THOMAS WAGETAFF sworn.

A book was delivered to him.

Q. What is the title of the book in your hand?

A. Peace and Union recommended to the associated bodies, &c.

Q. Did

Q. Did you ever see that book before that is now in your hands?

A. Yes.

Q. Where did you see it?

A. At the Master of Arts Coffee-room.

Q. Who keeps that coffee-room?

A. I do.

Q. From whence did that book come?

A. From Mr. Merrill's.

Q. Look at the second leaf; whose hand writing is that?

A. It is mine.

Q. What is written on the leaf?

A. Master of Arts Coffee-room.

Q. (from Mr. Friend.) Who has a right to take books out of the Master of Arts Coffee-room?

A. Any member belonging to the society.

Q. Is Dr. Kipling a member of that society.

A. No.

Q. Do you know then how the book came into Dr. Kipling's possession?

A. No.

Q. Do you know then who took it out of the coffee-room?

A. Mr. Frampton of St. John's.

Q. How long has it been taken out of the coffee-room?

A. On the sixth of May.

Q. Are

Q. Are there any limitations respecting the time of taking books out of the coffee-room?

A. Seven days.

Q. "I mean" how long is a book to be in the coffee-room before it may be taken out?

A. Two months.

Q. When did you receive this book?

A. On the fifteenth of February.

"Dr. Kipling observed to the court; this book, you observe, has an appendix."

Q. (from the court.) How did you know the book came from Mr. Merrill?

A. "I suppose so, as all books are sent in from Mr. Merrill. This was answered again."

A. Because it was numbered when it came in, which is the common case with books that come from Mr. Merrill.

"(Mr. Friend.) Do you not receive into the coffee-room some as presents?"

A. I do.

This evidence occasioned some delay, and Mr. Merrill was called again."

Mr. MERRILL called again.

Q. from the court. Do you remember numbering that book (showing him a book from the Master of Arts coffee-house)?

A. No, "'tis not my number," but I believe it to be the numbering of my young man.

THOMAS WATSON, A. M. sworn.

Q. Were you not curate of Fenstanton in February or March last.

A. I was.

Q. Did you not during that interval make some inquiries respecting the price of spinning wool?

A. I did.

“Vice-chancellor. What! what! spinning wool! what has that to do with this business. Dr. Kipping went up to the vice-chancellor and said something in a low voice to him: who said, ay, ay, go on.”

Q. Did you not during that interval make some inquiries respecting the price of spinning wool?

A. I did.

Q. What led you to that inquiry?

A. The perusal of part of a book which I had read in the Master of Arts Coffee-room.

Q. What book? what was the title of it?

A. I do not recollect the precise title, but I have reason to believe that the beginning of the title was Peace and Union.

Q. Is any persons name mentioned in the title-page?

A. I believe W. Friend, A. M. fellow of Jesus college.

Q. Did you find what is stated in that book respecting the price of spinning to be agreeable to the information you received from the inhabitants of Fenstanton?

A. I had reason to believe that the information I received at Fenstanton on that subject was different from the information I received from that book on that subject.

Q. Did you mention that seeming misrepresentation to any of your acquaintance at that time?

A. I did, whenever opportunity was made to me on that subject.

“Vice-

“Vice-chancellor. What is all this to prove?

Dr. Kipling. That Mr. Friend is the author.”

Q. Have you reason to think that Mr. Friend ever heard that you thought what is said in the above-mentioned pamphlet about spinning, is not true?

A. I have reason to conceive so.

Q. Mention that reason to the court.

A. I did receive notes or letters, as I presumed coming from Mr. Friend, in one of which I was desired not in future to assert that the subject on which I had been questioned in various companies, was a misrepresentation.

Q. Is that note in your possession?

A. It is.

Q. Have you it in court?

A. Yes.

Q. Please to produce it.

It was produced.

Dr. Kipling. I desire that the first note may be read.

“Mr. Watson. I cannot swear that the note was written by Mr. Friend.”

EDWARD KILVINGTON, A. M. sworn.

“Mr. Friend objected to the oath being given to Mr. Kilvington, as one of the twenty-seven. The court answered; this objection was over-ruled yesterday in Mr. Lloyd’s case.”

Q. (putting a note into his hands). Whose hand writing is that?

A. It is Mr. Friend’s.

Q. Have you frequently seen Mr. Friend write before?

A. Yes, frequently.

Q. (from Mr. Frend). Do you know it to be Mr. Frend's hand-writing?

A. I do.

Q. How came you to know it to be Mr. Frend's hand-writing?

A. By having very frequently seen him write, and from having letters of his now in my possession.

Q. Did you write any letters to Mr. Frend ever?

A. I believe I have.

Q. Where did you see Mr. Frend write?

A. In his own room when giving lectures, for three years or thereabout.

Q. How long since have you seen Mr. Frend write?

A. About six or seven years since, I saw him write, certainly not more.

Q. How then can you say that this is Mr. Frend's hand-writing that bears so late a date?

A. I have reasons, but on Mr. Frend's account I am unwilling to give them.

Q. Mr. Frend begs the witnesses may be desired to give them?

“ A. Mr. Frend's studied attentions---

Here a short delay and consultation in the court, after which the commissary asked Mr. Frend, do you wish him to produce additional reasons?

Mr. Frend. Undoubtedly.

Mr. Kilvington resumed;”

A. Mr. Frend's studied attentions shewn to me, as I believe they were shewn to all those whom he was desirous of profelyting to his own opinions, were such, as to have impressed very deeply upon my mind the recollection

lection not only of his hand-writing, but of a thousand other circumstances much more minute: added to this, I have occasionally seen his hand writing since the time which I formerly alluded to.

Q. How long since?

A. Very lately.

Q. How lately, how far back?

A. Within a month.

Q. On what occasion?

A. In the order book at the Master of Arts Coffee-house.

“The vice-chancellor and commissary here observed, that this added no new strength.”

“Mr. Kilvington. I was unwilling to speak more strongly.” And further believes that he has seen Mr. Frend write within these two or three years, “in his own room.”

Q. Did he read the writings which he has seen Mr. Frend write within these two or three years?

A. I have seen the direction of letters which I have seen Mr. Frend write.

Q. At what time precisely?

A. I cannot say: but I believe within three years.

Q. Is it within these two years?

A. I cannot say precisely: I believe not.

“Mr. Frend. He seems to say that he is well acquainted with hand-writing. I wish he may be asked whether he knows this hand-writing? (throwing down some papers).”

“The vice-chancellor thought they might be read; the commissary thought not.”

JOHN

JOHN PLAMPIN, A. M. sworn.

* Mr. Frend objecting to Mr. Plampin's evidence, said, he was one of the twenty-seven, and also one of those who had already sat in judgement on this matter in my own college, and condemned me on this very question without hearing any thing in my defence."

"The court observed, the objection had been over-ruled."

"Mr. Frend said, here is additional ground."

"A note was put into his hand."

Q. Whose hand-writing do you believe that note to be?

A. I believe it to be Mr. Frend's.

Q. (from the court.) Have you seen Mr. Frend write frequently and lately?

A. I have within six weeks.

Q. (from Mr. Frend.) Whether any of your pupils have an opportunity of knowing your hand-writing at lectures?

A. Certainly not, because it is not my duty to write in their presence.

"Does Mr. Plampin give any lectures in college?"

"Over-ruled."

"Dr. Kipling desired that a copy of the note might be given to him and the managers, which was agreed to, and Mr. Frend now desired that a copy of their resolutions might be delivered to him in exchange. This also was allowed."

THOMAS NEWTON, A.M. sworn.

“A note was put into his hand.”

Q. Whose hand-writing do you think that is?

A. I believe it to be Mr. Frend's, but I cannot say positively.

Q. (from the court.) Have you seen Mr. Frend write frequently, and how lately?

A. I believe I have seen him write within a year or two, but not frequently.

“The note was read.”

To the Rev. Mr. Watfon, fellow of Sidney coll.

Mr. Frend having been informed that Mr. Watfon has studiously endeavoured in various companies to make it appear that his account of the fall in the price of spinning was a misrepresentation, takes this opportunity of acquainting him, that Mr. Frend gained his knowledge of this circumstance from three sources; from the poor employed in spinning; from the persons employed by the wool-dealers to deliver out wool to the poor; and from the printed papers sent round by the wool-dealers. He asserts as a fact from these informations, that the poor person, who gained a shilling the week before the printed paper Mr. F. alludes to, was sent round, did the week after for the same quantity of work gain only nine pence. Mr. Audley, a wool-dealer in this town, is willing to corroborate this account, and will, Mr. Frend doubts not, give Mr. Watfon any further information on this subject, which may not only make Mr. Watfon's ideas clearer, but prevent him from mis-stating in future a matter of fact.

Jes. coll. Mar. 4, 1723.

Mr.

Mr. WATSON's evidence resumed.

Q. Has that note ever been out of your possession?

A. It has.

Q. How do you know that the very same note you lent was returned to you?

A. By my own hand writing, which is on one side of it.

Q. When was that written?

A. Before it ever went out of my possession.

Q. Did you return any answer to that note?

A. I did.

Q. Be pleased to produce that answer before the court?

A. The witness delivered in the answer, which he said he could not swear was a literal or verbatim copy of the answer he sent, but that it contained the meaning and substance of it, and was written soon after the other.

To Mr. Frend, Jef. Coll.

Mr. Watson has received a note from Mr. Frend, in answer to which he declares that whenever the oppression of the poor of Fenstanton has been the subject of conversation in consequence of Mr. Frend's appendix, that he asserted, that he wished to believe that Mr. Frend thro' ignorance had misrepresented the fact, his reason for this assertion was founded upon information he received at Fenstanton. Mr. Watson is still of the same opinion. As to being studiously earnest in contradicting or supporting Mr. F's publication Mr. W. denies the fact.

Thursday noon,

Q. Did you receive any reply to the aforesaid answer?

A. I did.

Q. Be

Q. Be pleased to produce that reply before the court, marked B?

The reply was produced and read.

Mr. KILVINGTON recalled.

A note marked B was shewn to Mr. Kilvington.

Q. Do you believe that the note marked B is the hand-writing of Mr. Frend?

A. I do.

Mr. PLAMPIN recalled.

The note marked B was put into his hand.

Q. Do you believe that note marked B is the hand-writing of Mr. Frend?

A. I do.

Mr. NEWTON recalled.

The note marked B was put into his hand.

Q. Do you believe that the note marked B is the hand-writing of Mr. Frend?

A. I believe it is.

To the Rev. Mr. Watton, Fellow of Sidney Coll.

Mr. Frend requests the favour of Mr. Watton to omit in future his remark on Mr. F's account of the fall of spinning, namely, that he wished to believe that Mr. Frend thro' ignorance had misrepresented the fact, as Mr. Frend takes upon himself to assure Mr. Watton that the fact is not at all misrepresented. Mr. Frend has informed Mr. Watton from what sources he derived his information, and takes the liberty of observing that Mr. Watton is not probably aware that the printed bill at-

luded to are formed at meetings for a large district, and that those, which Mr. Frend saw, did not relate only to the spinners of Stanton, but extended over Huntingdonshire, parts of Northamptonshire and Bedfordshire.

In consequence of Mr. Watson's note Mr. Frend called this evening on Mr. Audley who has given him a printed paper just made for Cambridgeshire, parts of Hertfordshire, Bedfordshire, and Huntingdonshire, and shewn him letters from Yorkshire and other parts informing him of the progress in the lowering of the price of spinning. At a meeting this week in Suffolk, spinning was lowered again 2d. per pound, from 9d. to 7d.

Now if, in contradiction to Mr. Audley and a variety of dealers whom Mr. Audley is willing to name to Mr. Watson, besides giving him every other information on this subject, Mr. Watson still persists in declaring that the price of spinning, which was one week at a shilling, and reduced according to Mr. Frend's account to 9d. the week after, was not in this manner reduced, Mr. F. can only request that he would point out to him from what sources he has derived an information, which the principal dealer in wool of this place declares not to be true, which Mr. Frend knows also not to be true from the actual inspection of the printed papers, which regulate these proceedings.

Mr. Frend did not in his former note refer to his publication at large, but simply to the fact of the fall of the value of spinning; he did not say that Mr. Watson was studiously earnest in contradicting or supporting Mr. F's. publication, but solely that he has studiously endeavoured, in various companies, to make the account of the fall in spinning appear a misrepresentation.

Jeff. Coll. Mar. 14, 1793.

Mr. WATSON'S evidence resumed.

Q. Produce your answer to the note marked B?

The

The answer was produced and read, and declared by the witness to be written under the same circumstances as the other.

To Mr. Frend, Jef. Coll.

Sir,

I was sensible from the inquiry that I made that the price of spinning was at the time mentioned in your pamphlet lower than the common current price, and that the value of a shilling's worth of labour was only paid by 9d.

You may probably be better skilled in the mysteries of woollen manufacturies than I can pretend to be; my trifling knowledge of this trade does not attempt to account for the reason of paying what is term'd a shilling's worth of labour with 9d. or 10d. but I believe it to be a notorious fact, that in proportion to the fluctuating value of the manufactur'd commodity, the price of spinning a certain quantity of wool, has varied in different degrees downwards from one shilling, which may be considered as the maximum; and that this did not commence at the period you mention, for previous to that the price of woollen goods had not been at the highest, and therefore a full shilling was not paid for the labour of spinning that certain quantity. This information I received from some of the most respectable inhabitants of each of my parishes, and to the best of my recollection it is the substance of what I have said, when I have conceived your assertion (however well meant) hastily adopted, that before the commencement of the present war one shilling was the current price, and that it immediately fell 9d. I again repeat that I did not think myself interested about any part of your pamphlet as to be studiously earnest in having it discussed in various companies.

I am, Sir, your humble servant,

Sid. Mar. 15, 1793.

Jos. WATSON.

Q. Did you receive an answer to the note you have now read?

A. I did.

Mr. KILVINGTON recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Friend?

A. I do.

Mr. Plampin recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Friend?

A. I believe it is.

Mr. NEWTON recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Friend?

A. I believe it is.

Mr. WATSON's evidence resumed.

Q. Were the two last notes produced by you, marked with the marks B and C, marked before you ever parted with them?

A. They were.

Note C was read.

To the Rev. Mr. Watson, Fellow of Sidney Coll.

Mr. Friend did not write to Mr. Watson to enter into any controversy on the miseries of woollen manufactures, which, like the pretended mysteries of religion, are only such to those who do not give themselves the trouble of gaining knowledge from the proper sources. It is of a misrepresentation of a matter of fact to the injury of Mr. Friend's character that he complains, and, however

light the subject may appear in Mr. Watſon's eyes, as long as truth is violated, it becomes Mr. Watſon to acquire juſt information, and, having done that, either to convict Mr. Frend of a falſehood or to retract his former aſſertions. Mr. Frend declares that, at the time mentioned in the appendix to his pamphlet, ſpinning was at ninepence, the week before it was at par or a ſhilling. Mr. Watſon denies this, and is referred by Mr. Frend to Mr. Audley, the principal wool-dealer in this place, or to any wool-dealer in Huntingdonſhire. It appears ſtrange that Mr. Watſon ſhould delay to call on Mr. Audley, from whom he will gain more information on this ſubject than from the moſt reſpectable inhabitants of his pariſh, who are not immediately concerned in letting out ſpinning to the poor.

Jef. Coll. Mar. 15, 1793.

Q. Did you answer the third note marked C?

A. I did.

Q. Did you ſend that answer of your's to Mr. Frend?

A. I did.

Mr. Watſon's answer to note C was read.

To Mr. Frend, Jef. Coll.

Sir,

You aſſert that I deny what you poſitively affirm I do not. The information I received upon the ſubject ſeemed to me inconſiſtent with your publication. I repeat to you that I am not converſant in the knowledge of or practices obſerved in woollen manufactures. I cannot from myſelf preſume to contradict what you from your profeſſed extenſive inveſtigation of the ſubject poſitively affirm. I will endeavour to recollect (if the matter can be deemed worthy of recollection) that the idea which I had formed from the information of my pariſhioners has been unequivocally contradicted by you.

you. I have before said, that I wish'd to believe that thro' ignorance you had misrepresented a matter of fact. You cannot think, that I have injured your character by supposing you liable to error, but I affirm that it will be a violation of truth if you maintain, that I have studiously endeavoured in various companies to accuse you of wilful misrepresentation. I beg leave to decline any future correspondence with you upon the subject of the fall of the price of spinning at Fenstanton. I would wish to appear to possess the sentiments of that person or those persons, who humanely and studiously endeavoured to deliver your pamphlet from the incumbrances of its appendices, by tearing them from the copies, that at a certain period remained with the booksellers. I would not wish that by any endeavours of mine, even the remembrance of them should be attached to the pamphlet from which they were studiously separated. The intention of that separation was doubtless, that they might be consigned to oblivion, that peaceful receptacle, where enthusiastic rhapsodies and chimerical theories, having lost their novel eccentricity, repose undisturbed, being secured by their own intrinsic insignificance*.

I am, Sir, your humble servant,

JOS. WATSON.

Q. By whom did you send that answer to Mr. Friend?

A. By my bed-maker John Smith.

Q. Whether John Smith brought any answer?

A. He did.

Q. Have you any particular reason for thinking that the notes A. B and C. came from Mr. Friend of Jesus college?

A. I have.

Q. Please

* The letters of Mr. Watson and Mr. Friend are given here, the former from the original, the latter from copies in Mr. Friend's possession.

Q. Please to give that reason to the court?

A. The first time I met Mr. Frend in public after the receipt of the third note, he used to me the words; Our correspondence has ceased.

Q. Had you any other correspondence with Mr. Frend, in writing, since Christmas.

A. Not to the best of my recollection.

Q. Is there any other reason you would produce to the court?——**A.** No.

Q. (from Mr. Frend). Whether you have not reason to believe that the information you received from Pen-stanton was not true?

A. At the time I received the information I thought it true, and was satisfied with what Mr. Frend had shewn me.

Q. What did Mr. Frend shew you?

A. Some papers which Mr. Frend shewed me since the correspondence.

Q. What did those papers relate to?

A. I do not exactly know.

Q. Were they certificates?

A. I believe one might have the form of a certificate, do not positively know what they might be.

Q. Were they all written papers?

A. I believe not.

Q. Have you any recollection of what the printed papers related to?

A. I remember seeing one printed paper particularly.

Q. To relate what that printed paper contained as to your recollection?

A. I believe it contained a scale of the prices of wool spinning, but I cannot swear that it did.

ACTA CURIÆ.

At a Court, holden, &c. between the hours of ten and two,
on Monday the thirteenth day of May, &c.

FRANCIS HODSON was sworn and examined. Also Edward Kilvington, A. M. John Plampin, A. M. Thomas Newton, A. M. John Merrill, John Bowtell, sen. John Bowtell, jun. and Harvey Alger, were examined. And John Smith, and William Mathew, Fellow of Jesus College, and LL. B. were sworn and examined.

Dr. Kipling read the third article, and page 29 of the pamphlet, entitled, ‘Peace and Union,’ beginning from the words ‘The liturgy,’ &c. to words, ‘such compositions,’ and referred the said article to the judgment of the court.

Dr. Kipling then read the fourth article, and from pages 36, 37, and 38, beginning from the words, ‘the same passions,’ and ending at the words, ‘episcopal conventions,’ in the said pamphlet, and remarked upon the same.

Dr. Kipling then read the fifth article; and read from the 39th page of the said pamphlet, beginning from the words, ‘the christian world,’ to the words, ‘spirit of Christianity;’ and adduced the case of Charke, fellow of Peterhouse, 1572.

Dr. Kipling then read the sixth article, and read from the said pamphlet, from pages 39 to 40, beginning at the words, ‘the laity, like’ to the words, ‘with his cloaths;’ and submitted the article to the judgment of the court.

Dr.

Dr. Kipling then read the seventh article.

Dr. Kipling read the eight article, and read part of the statute, ‘ de concionibus,’ from the words, ‘ prohibemus,’ &c. to the end, and the grace 1603, page 365.

Dr. Kipling then read the ninth article.

And the court was adjourned to Friday the 17th inst. at ten o’clock in the morning.

FRANCIS HODSON sworn.

The Cambridge Chronicle and Journal was put into his hand, dated February the ninth, one thousand seven hundred and ninety-three.

Q. Are you the printer of this newspaper?

A. Yes.

Q. Read the advertisement in the third page, third column, the ninth from the top?

A. Read the same to the court; This day, &c.

Q. By what authority did you enter that advertisement?

A. A gentleman of the university brought it to me in writing, on the sixth of February, and desired me to insert it; and did pay me for the insertion.

Q. Was it Mr. Frend himself?

A. No.

Q. Do you know who the gentleman was?

A. It was the Reverend Herbert Marsh, fellow of St. John’s college.

“ Dr. Kipling observed to the court: Mr. Marsh is so much indisposed, as not to be able to attend till sent for into court.”

Q. Have you the writing which Mr. Marsh left with you?

A. Yes.

Q. Produce that note to the court? the same was read.

“ Dr. Kipling. I shall not prove the hand-writing of this note, till another note is produced.

“ The note was directed to the Reverend Herbert Marsh.

“ Mr. Hodson observed, the direction had nothing to do with the advertisement. The advertisement then was read. Mr. Hodson observed, that it was preserved as his authority for inserting it. Mr. Marsh, who had been sent for, now appeared, and addressed the court in these words: *

“ Mr. vice-chancellor,

“ Is it absolutely necessary that my evidence should be taken? You’ll consider, Sir, that Mr. Frend is a near relation—a man with whom I have been educated from my childhood, and, of course, a confidential friend. I think it hard,—you yourself, Sir, with every assessor on the bench, would think it hard,—nay, even the prosecutors themselves, if it was their own case, would think it hard, extremely hard, to be dragged forward in this publick manner, to act against a man with whom they were connected by the bonds of friendship, and united by the ties of blood. I request, sir, the opinion of the court. The vice-chancellor, with the commissary and heads, then retired, and in about a minute the vice-chancellor returned, and made the following answer: Mr. Marsh, the court has taken your case into consideration, and is of

* Before this, Mr. Marsh had frequently expostulated with the promoter on the cruelty of forcing him to attend, and, failing of success, had addressed him in writing.

opinion, that you ought not to be examined, unless Dr. Kipling particularly insists upon it. To which Dr. Kipling replied, that he only wished to ask Mr. Marsh a few questions, for form's sake, relative to the letter. The commissary then addressed Dr. Kipling to the following purport :—Dr. Kipling, you have heard Mr. Marsh's reasons : the court is satisfied with them ; and, I think, therefore, you will not insist on his being examined. Dr. Kipling, with some reluctance, then gave up the point : and Mr. Marsh retired."

Q. The Cambridge Chronicle and Journal, dated 16th February, was then put into the witness's hands.—Are you the printer of that newspaper?

A. Yes.

Q. Read the advertisement, the first of the third column, third page?

A. The same was read: This day, &c.

Q. By whose order did you insert that advertisement?

A. By Mr. Frend's own order personally.

Q. Mention to the court what passed between you and Mr. Frend relative to that order?

A. I cannot recollect the exact words : but Mr. Frend desired me to repeat his advertisement in the next paper, and to say, ' This day is published.'

" Dr. Kipling. Did he not make use of these words, My pamphlet. This question was disallowed by the court as unfair."

Q. Did he make use of any other words?

A. Not to his recollection.

Q. Did you receive a note from Mr. Frend soon after that conversation?

A. I received a note in the name of Mr. Frend, saying,

K :

that

that he had omitted to desire me to add the price of one shilling.

Q. Produce that note before the court?

A. The same was produced and read.

Q. "Whose hand-writing do you think it is? Agreed by many voices in the court, that this was not a proper question."

Q. Have you ever seen Mr. Frend write?

A. Yes, "often; but not this note. Without that I cannot swear to this."

Q. Do you think those notes were written by Mr. Frend?

A. I am of opinion they were; but I would not be supposed to speak positively. "Vice-chancellor asks, What are your reasons for thinking it Mr. Frend's?" The reasons are, that the respect I have for Mr. Frend as a gentleman of literature, and a member of this university, would not have permitted me to infer an advertisement to which his name was annexed, unless I supposed I had his own authority for doing it.

EDWARD KILVINGTON, A.M. sworn.

"Dr. Kipling. I refer to the former testimony given by Mr. Kilvington, and shall not put the previous question again, Whether he has seen Mr. Frend write."

Q. (Notes marked A. and B. were put into his hand.) Whose hand-writing do you believe that to be in the note marked A.?

A. Mr. Frend's.

Q. And in the note marked B.?

A. Mr. Frend's also. "Mr. Frend seemed to object to my former evidence, and asked, Whether I had seen him writing within two years? I was then unprepared."

Q. "By

Q. “By Mr. Friend.” Does Mr. Kilvington recollect that he has seen Mr. Friend write within these two years?

A. I am now, upon recollection, prepared to say that I have.

Q. Have you read any of Mr. Friend’s hand-writing within these two last years, that you have seen him write within these two last years?

A. I have.

JOHN PLAMPIN, A. M. sworn.

Q. Look on the note marked A. Whose hand-writing do you believe that to be?

A. I believe it to be Mr. Friend’s; though I am not so certain of it as of the others.

Q. Look at the note marked B. Whose hand-writing do you believe it to be?

A. The same answer as to the former question.

THOMAS NEWTON, A. M. sworn.

Q. Look at the note marked A. Whose hand-writing do you believe that to be?

A. I cannot speak positively, but I believe it to be Mr. Friend’s.

Q. Look at the note marked B. Whose hand-writing do you believe that to be?

A. I return the same answer as before.

JOHN MERRILL, sworn.

Q. Have you, “or any one for you, objected to by the court,” ever received into your hands, any one copy of the pamphlet, entitled “Peace and Union,” and so forth, by William Friend, besides those fifty copies which you

you mentioned in your former evidence to have been brought to your house from Mr. Bowtell's, on or about the fifteenth of last February?

“ Mr. Frend interposed, and begged that Dr. Kipling might be confined to simple questions, without any prolegomena, till he acquires the talent of writing prolegomena better.”

A. I never received any more than that parcel which I received on the thirteenth of last February.

Q. “ Did you ever sell a book, called A second address to the inhabitants of Cambridge, published 1789. Dr. Kipling produced a book.

Court asks, Do you think it material to prove the publication of Peace and Union?

Dr. Kipling. No. I want to explain some passages in the present publication by it.

Mr. Frend rose and asked: Are my supposed opinions in 1793, to be explained by a book, supposed also to have been written by me in 1789?

The court rejected the book as inadmissible in evidence.”

JOHN BOWTELL, sen. sworn.

Q. Have you ever had in your house, either as presents or for sale, any copies of the pamphlet, entitled, Peace and Union, &c. by William Frend, that were not contained in the parcel that you formerly told the court was opened by Mr. Frend at your house, and in your presence?

A. Not one that I have seen.

Q. Do you not think you would have seen them had there been such?

A. Yes, I think I certainly should, had I been in the way.

Q. Did

Q. Did you ever hear of any such coming into your house, that were not contained in that parcel?

A. Yes.

Q. Do you know from whence they came?

A. No.

Q. Do you know who brought them into your house?

A. No.

Q. Who told you about them?

A. My nephew, John Bowtell.

Q. Have you sold any of those copies?

A. No.

Q. Are they still in your possession?

A. No.

Q. To whom have you delivered them, or caused to be delivered?

A. I neither delivered them to any body, nor caused them to be delivered.

JOHN BOWTELL, jun. sworn.

Q. Have any copies of the pamphlet, entitled, Peace and Union, &c. by William Frend, been brought into your master's house, besides all those copies of the same pamphlet which were taken out of a parcel opened by Mr. Frend, in your master's house and presence?

A. I brought some in myself.

Q. Do you recollect how many you brought in?

A. No.

Q. From whom did you receive those copies?

A. I fetched them from the inn where the carrier sets up at.

Q. What

Q. What carrier?

A. The St. Ives.

Q. To whom were they directed?

A. They were directed to our house, and I think for Mr. Frend.

Q. Who ordered you to go to the carrier's for them?

A. Mr. Frend.

Q. What did you do with those copies?

A. Mr. Frend desired me to unpack them.

Q. Where were you when Mr. Frend desired you to unpack them?

A. In our own house.

Q. Do you know what became of them afterwards?

A. They were sent to London.

Q. Did you take them to the London carrier yourself?

A. Yes.

Q. (from the court.) How do you know they were copies of that pamphlet?

A. I saw some of them untied, and saw the title pages.

Q. When?

A. About the sixteenth or seventeenth of February, on a Thursday night, and they were sent to London the same night.

Q. "(from Mr. Frend)" Do you remember seeing Mr. Frend before at your house, packing up or unpacking parcels?

A. I have seen Mr. Frend one or two days before in our house unpacking a parcel.

Q. Within these three or four years last, have you
seen

seen him frequently unpacking parcels, or causing them to be packed ?

A. I do not remember that I have.

JOHN BOWTELL, sen. again examined.

Q. Have any copies of the pamphlet, intitled, Peace and Union, &c. by William Frend, been sold in your house, which were not taken out of the parcel which you saw Mr. Frend open, to your knowledge ?

A. No others have been sold but what came out of that first parcel that I know of.

Q. Have any copies of said pamphlet been sent from your house to Mr. Merrill's, or Mr. Lunn's for sale, which were not taken out of the same parcel ?

A. That I cannot tell, I do not know of any.

“ Mr. Frend here asked, Whether it was usual and regular to call and recall evidence in this manner ?

The commissary said, he wished that it could be avoided.”

Q. Have you ever sold any copies of said pamphlet, with the appendix annexed ?

“ Mr. Frend objected to this question, but the objection was over-ruled.”

A. I do not recollect that I have sold one with the appendix annexed.

Q. Was that appendix torn from any copies of the pamphlet at your house ?

A. Ye — it was cancelled.

Q. Who cancelled the appendix ?

A. I did.

Q. By whose order?

A. Mr. Frend's.

Q. To whom have you given credit in your books for the money you have received for copies of the pamphlet that are sold?

A. Mr. Frend.

Q. (from Mr. Frend.) Do you recollect several parcels of books, of various authors, in the course of four years, or five years, being packed or unpacked by my orders at your house?

A. I do.

HARVEY ALGER fworn.

Question. Of the two copies of the pamphlet intituled 'Peace and Union, &c. by William Frend,' which you purchased by my order at Mr. Lunn's or Mr. Bowtell's, did you deliver both into my hands on the first court day, or one only?

A. Only one.

Q. Which of them was it, that which you purchased at Mr. Lunn's, or that which you purchased at Mr. Bowtell's?

A. That which I purchased at Mr. Lunn's.

Q. How do you know it was that pamphlet in particular?

A. By having marked it with an L.

Q. Did you see me take the very same pamphlet from the table in the court on that day?

A. Yes.

Q. How do you know it to be the very same pamphlet?

A. By the marks which were on it.

Q. At

Q. At what time did I take it from the table?

A. At the time the court broke up.

Q. To whom did I deliver it?

A. To me.

Q. When and where?

A. At the table, at the time the court broke up.

“ Dr. Kipling now observed, that the evidence having been given in court at different times, and in a detached way, he must beg for time to collect the substance and to arrange his observations upon it: but recollecting that John Smith had not been examined, he was called in and sworn.”

JOHN SMITH sworn.

Q. Do you know Mr. Friend of Jesus college by sight?

A. Yes.

Q. Do you recollect carrying a note to him from Mr. Watfon of Sidney, within these two or three months?

A. Yes.

Q. Did you deliver it into Mr. Friend's own hand?

A. Yes.

Q. What did Mr. Friend say to you on that occasion?

A. It required no answer.

Q. Is this the only note you ever took from Mr. Watfon to Mr. Friend?

A. Yes.

“ Dr. Kipling. I am now ready to proceed on article the third, and will repeat the passage. Here Dr. Kipling read. Mr. Friend objected that the passages as quoted by Dr. Kipling, were not in the book. Dr. Kipling said; to be sure it mentioned parity of arrangement, but he

left that out because he did not understand what it meant. We accuse him of defaming the liturgy. In proof of this assertion the promoter was going to read a passage out of the pamphlet published by Mr. Frend in 1789, but the defendant objected to this, and the vice-chancellor, after a considerable demur with the heads, said, we think that unless Mr. Frend allows that to be his book, and that he is of the same opinion now which he was then, it cannot be read. Dr. Kipling. I will then leave that article to the judgement of the court.

“ Dr. Kipling proceeded to the 4th article, and read p. 36, 37, 38, observing that the church of England must be included, as appears evidently from the context. For in page 36, the authour distinguishes the whole body of christians into the members of the church of England, the dissenters, then the few dispersed over England, called, unitarians. Page 37, he speaks of the great body as deviating from the worship of the one God. By this, therefore, he must mean the church of England and dissenters together. Certainly, therefore, the church of England is included. This great body he asserts to have associated the worship of created beings, p. 37, with that of the god and father of Jesus Christ. He charges us, therefore, directly with idolatry. He cannot be speaking of the church of Rome, for he says, p. 38, ‘ Let churchmen and dissenters examine how far they have deviated, &c.’

“ Vice-chancellor. I should be glad, Dr. Kipling, to hear how you make out that in the great body of christians the church of England is included. Dr. Kipling. I could have produced better evidence if I had been allowed. The 5th Article being read, and passages quoted from p. 39, Mr. Frend looked up and down the page, but declared he could not find it. Dr. Kipling. It is there. Mr. Frend. I cannot find it. Dr. Kipling. Mr.

Vice-chancellor, it is exactly the same, 'tis all there except an omission. Here a loud laugh on all sides.

“Dr. Kipling, after reading the 5th Article, said, I believe, Mr. Vice-chancellor, it is not unusual for the prosecutor to point out precedents for the direction of the court. I will produce one. In the year 1590, Mr. Charke was charged with asserting in a concio ad clerum, first that all bishops, archbishops, and the pope, were introduced by Satan, into the church. 2dly, with affirming, that there ought to be no ranks of superiority in the church whatever. He was brought before the vice-chancellor, and confessed the charge. He was called upon to recant; he refused, and was excluded from his college, and banished the university.

“Mr. Frend. Was this done by the vice-chancellor and the heads, or in the vice-chancellor's court?

“Dr. Kipling. It was done somewhere, I don't know where.

“Dr. Kipling read the 6th Article, and said he had nothing to add to that article, he should leave it all to the court.

“The seventh Article having been read,”

WILLIAM MATHEW, LL. B. Fellow of Jesus college,
was called and sworn.

Q. Was Mr. Frend a fellow of Jesus college in the month of February last, and does he continue to be a fellow of the same at this time?

A. He was fellow in the month of February last, and is fellow at this time.

Q. On what ground do you affirm that?

A. On two grounds: first, because the admission to the fellowship in Jesus college appears upon the register of the
the

the college, and because I pay to him such money as is due to him as fellow.

Mr. PLAMPIN called in again.

Q. Do you know that Mr. Frend was fellow of Jesus college during the whole month of February last, and that he continues still to be fellow?

A. Yes, I do.

“Commissary. It appears that a Mr. Frend was fellow of Jesus, but not that the defendant is that Mr. Frend.

Dr. Kipling. I believe it is the practice of the court to put the defendant to admit or deny it.

Court. You are to prove he is a master of arts.

Dr. Kipling. The register books prove that, but they are not here. But here is a young man who was examined for his bachelor’s degree by Mr. Frend, and as none but masters can examine for that degree, it follows that Mr. Frend was a master of arts.

Vice-chancellor. That is no proof. People may take liberties which they have no authority for.

8th Article. The decree of 1603 was read, then the law de concionibus from Prohibemus, by the bedell. Mr. Frend desired that the bedell might read any other laws, if any more were to be made use of. Dr. Kipling. I do affirm that he has offended these. Mr. Frend. Does the promoter mean to refer to any other? Vice-chancellor. If he does, he must produce them in time for you to consider them.

Dr. Kipling. I shall mention no more.

Mr. Frend. Does he refer to any more? if he does, let him declare them like an honest man.

Vice-chancellor. Do you (to the promoter) mean to mention any more?

Dr. Kipling. At present I have no intention.

Mr. Frend. Will he be allowed, after this, to mention any more?

Vice-chancellor. If he does, time shall be given to Mr. Frend.

The 9th Article was then read, praying that right and justice be done.

Here the evidence was closed, excepting only the proof of Mr. Frend being a master of arts which was postponed to the next court-day.

The Vice-chancellor then asked, at what time Mr. Frend would be ready, and in what manner he meant to conduct his defence.

Mr. Frend said, that he intended to divide his defence into three parts, which might take up about two hours each; that he would comprise it in less if possible; that his health might not enable him to go through more than one part in a day, but he trusted that, if necessary, such indulgence would be allowed to him; he engaged it should not exceed that time.

Dr. Kipling then begged, that he might be allowed a little time to collect, arrange, and digest the evidence on the publication which had necessarily been so disjointed; and to add some observations upon it.

This was granted, and the court adjourned to Friday the 17th, 10 o'clock in the morning."

ACTA CURIÆ.

At a Court holden, &c. between the hours of ten and twelve, on Friday the seventeenth day of May, &c.

THE book of degrees, and a supplicat for the admiffion of William Friend, of Jefus College, to the degree of A. M. were produced;

And Dr. Kipling was heard upon the evidence heretofore produced in this caufe to the court;

And the court was adjourned to Friday next, the 24th instant.

HEADS OF THE PROMOTER'S SPEECH.

“ Dr. Kipling thought it incumbent on him to exprefs his acknowledgement to the vice-chancellor and the court, for the patient attention which they had fhewn to the caufe, and their indulgence in allowing him time to arrange the evidence, which had been various and detached, and to digeft it in fuch a manner, that its combined force might be more clearly and fatisfactorily perceived. He declared, that he fhould avoid every thing perfonal and offenfive, and confine himfelf folely to the merits of the cafe, as all his aim was to procure right judgement and equal decifion, and he trufted that the vice-chancellor and his affeffors would think it reasonable to expect the fame conduct from the defendant.

“ After this exordium he proceeded to fum up the evidence, and to direct it to the proof of three points, that

that Mr. Frend was the distributor, the publisher, and the author of the pamphlet, entitled Peace and Union.

“ The proof of the dispersion of Peace and Union was inferred from Alger’s copy bought of Lunn, marked L, and traced to Mr. Frend. 2d. From Mr. Lloyd’s copy, which was in the same manner traced to Mr. Frend. 3d. From Alger’s second copy, bought of Bowtell, and also the copy from the master of arts coffee-house, had from Merrill, which were also traced up to Mr. Frend. 4th. From there not being one copy fold in this place but by Mr. Frend’s direction.

II. “ The proof of the publication was inferred from,

“ 1. The parcel brought to Bowtell, opened by Mr. Frend, and accounted for to him. 2d. The directions given by Mr. Frend to young Bowtell to carry them out to Merrill’s. 3. The receipt of them by Merrill’s maid. 4. The testimony of Merrill himself. 5. The directions to young Bowtell to take them to Lunn. 6. The receipt of them by Life, Lunn’s foreman.

“ The promoter added to this article, he could enumerate more proofs, but they were unnecessary.

III. “ The proof of authorship was inferred from,

1. “ The name on the title page.
2. “ The cancelling of the appendix by Mr. Frend, at all the bookellers.
3. “ Mr. Frend speaking of it to Life as his pamphlet.
4. “ Hodson’s orders for advertisement.
5. “ Dr. Dickens’s copy, and Mr. Watson’s corresponding evidence. If after this, which was amply enlarged upon, any person be inclined to dispute, that

Mr. Frend is the author of the pamphlet in question, Dr. Kipling maintained, that he had at least taken upon himself the responsibility of it. Dr. Kipling then closed the account of the evidence, reserving however the right of answering Mr. Frend, if he should advance any thing to invalidate these proofs. *

“ The vice-chancellor then observing, that Dr. Kipling spoke from notes, said; Do you put the court in possession of those notes?—Dr. Kipling. I should have no objection: but they cannot be of any use: they are merely to assist my recollection: you could not read them.

“ Vice-chancellor to Mr. Frend. Are you ready to enter now upon your defence?

“ Mr. Frend. It must be clear that I cannot, as I have not yet seen the evidence that was taken down in the court, and I wish to know in whose hands it has been?

“ Commissary. It is no part of the *acta curiæ*; it is only for private assistance of the vice-chancellor and his assessors; it is no record.

“ Mr. Frend. Has any body had it?

“ Registry. Dr. Kipling.

* The heads of this speech will give the reader a complete idea of the substance of it, for nothing scarcely was added under each article, except passages taken from the depositions, and to do the promoter justice, it must be confessed, that this part was done in a very masterly manner. The names of the book-sellers, and their servants, flowed with great ease from his lips, and their evidence was recited with a fluency and accuracy which would have done Dr. Kipling credit in the Old Bailey, or any other court of justice. As the reader however is in possession of the depositions themselves, it is superfluous to repeat them in this place.

“ Mr.

“Mr. Frend. By whose authority? I concluded he must have had some such assistance, from the singular fluency and accuracy with which he summed up the evidence which has been given. Who knows what liberties may have been taken with it? I shall certainly expect the same indulgence.

“Vice-chancellor. There was no reason why Dr. Kipling should not see it, nor can there be any why Mr. Frend should not,

“The vice-chancellor then proposed Monday or Tuesday for Mr. Frend to enter on his defence, but it being observed, by two heads of colleges, that those days were sermon days, and Dr. Fisher being obliged to be in London on the Wednesday, Friday was proposed and accepted. The vice-chancellor observed, that it was the wish of the court, that Mr. Frend might be able to finish all in one day. Mr. Frend replied: If it were possible he certainly would; but if he found it impossible, he trusted that he should meet with the same indulgence which had been granted to Dr. Kipling.”

ACTA CURIÆ.

At a Court, holden, &c. between the hours of ten and three, on Friday the twenty-fourth of May, &c.

MR. FREND was heard in his defence, having first reserved to himself the power of objecting hereafter to any part of the evidence, or of the proceedings heretofore produced and had before the court in this cause.

Mr. Frend having read certain objections to the evidence, particularly that the minutes taken by the registry in this cause had been taken out of court, and delivered to the promoter, and the registry being asked by Mr. Vice-chancellor, if the minutes had undergone any alteration while in the hands of the promoter, the registry declared, that he had looked over the minutes, since they were returned by the promoter, and that they had not undergone any alteration while in the promoter's hands.

Mr. Frend interposed a protest in writing, against the validity of the said minutes.

The grace book, containing the graces 1603, was produced: and it was admitted by the court, that the grace, ‘ placet vobis ut quicunque doctrinam, &c.’ was not to be found in the said book.

Dr. Kipling was heard, in remarking on the defence of Mr. Frend, and

The court was adjourned to Tuesday next at eleven o'clock.

Mr.

Mr. FRENCH'S SPEECH.

Mr. Vice-chancellor,

I Think myself happy in having arrived at last to that period, in which it is permitted to me to speak in my own defence, and to refute those calumnies, under which, for so considerable a time, I have laboured. The patient attention, which you have bestowed on this cause during the fatigue of so many days, encourages me to hope, that you will listen to me with equal candour, and that I shall find no difficulty in proving to your satisfaction as well as that of the whole court, that the charges brought against me are, as I asserted on a former day, false, wicked, and malicious.

It is indeed a very extraordinary cause which now awaits your decision; a cause not to be paralleled in the annals of this university or even of the kingdom at large. For in what preceding period is it recorded, that a number of masters of arts and doctors combined together to attack the rights of a member of the senate? When was it thought necessary, that in defiance of the just power of the heads of this place, a cabal should erect itself into an inquisitorial office, and take under its cognizance the writings or speeches of an academick? When did the publication of a pamphlet give rise to a persecution like this, which, though in its consequences it is not so much to be dreaded as those of former ages, from the malignity and base arts of the conductors, and the total violation of law and justice with which it has been carried on, exceeds certainly every thing that has been recorded on the page of history.

About the middle of February was published a pamphlet, entitled 'Peace and Union.' It came forth at a time when the public mind was filled with the strongest apprehensions of dangerous plots against the peace of

this kingdom, and insurrections were supposed ready to break out in every quarter. As the highest authority had given the alarm, each man was in fear for his own safety, but no one could possibly announce from whence the attack should begin. Troops were dispersed incognito over the country, and a look or a jest was sufficient to rank the friends of mirth and good humour among the enemies of government. The university was not free from the contagion of the times, and there were among us men well known for their intriguing disposition, who endeavoured by every art in their power to countenance a deception, which ought not to have gained ground but amongst the lowest of the people.

Complaints made to
the Vice-chancellor.

On the first appearance of the pamphlet in question, it was held forth as a most dangerous attack on every thing sacred to englishmen, both in their religion and politicks. The flame ran from one to the other, and long before the contents could be digested, it was declared absolutely necessary for the safety of the university and of the state itself, that the author should be punished in the most exemplary manner. Individuals first complained to the vice-chancellor, then parties of two, three or more at a time, and at last a meeting was called of the disaffected, who, now well known by the name of the twenty-seven, entered into resolutions, appointing managers for the prosecution, and directing that proper steps might be taken to deprive the author of his degrees, and to banish him from the university.

Steps taken by the
promoter.

This important business could not however be completed with the rapidity with which it was planned. The promoter found that several previous steps were necessary, and above three months elapsed, before he was prepared to display his eloquence in open court. In this time every assistance was given to him

him which the ablest barristers in town could afford; the publick oratour imparted to him his eloquence; from the Lady Margaret's professour he was supplied with elegance of diction; and the professour of civil law by communicating to him the whole of his knowledge in that profession, felt himself enervated at his usual lectures. But all this assistance would have been in vain if other means had not been employed: while the committee was compiling and arranging within, the familiars were engaged without doors, in searching out for information, in learning where the supposed authour spent his time, what was his conversation, what letters he had received, and to whom he had written. It was enough, that a familiar heard a person say, that he heard another person say, that Mr. Frend had been talking to another person about his book. In an instant the promoter flew to the rooms of the last mentioned person, sifted out the conversation, and adapted it to his purpose. One gentleman^a was summoned to appear in this place, and was actually under the necessity of leaving a canvas in London, merely because it was his misfortune to have been chatting over a tea-table with some ladies, when Mr. Frend came in and joined the conversation. No stone was left unturned: bookfellers, bookseller's boys, printers, friends, relations, and enemies, all were set to work to bring so great a criminal to justice.

^a Mr. Frend's constant and assistance.

Against these mighty efforts what had I to oppose? Nothing, Sir, but silence and my own innocence: trusting in the mean while to the natural effect of time and the good sense of the univer-

* The Rev. Mr. Davis, junr. fellow of Trinity college, was summoned in this manner, and, to his very great inconvenience, was present on the first day in the senate-house. The promoter, balled in his scheme on that day, and universally reprobated for his conduct in the influence, was obliged to give up his intention of bringing Mr. Davis down to the bar.

fity, and not doubting that, when the cause was heard, the folly and malignity of the conducters would appear in the most striking colours. Not that I would have it supposed, that I came here without assistance. The university has seen me accompanied by three of its members, who would do honour to any cause. They are men of tried learning, abilities, and integrity. Men who ran to me in the hour of distress, and on whose kindness and support I shall to the last moment of my life, reflect with gratitude. Such men the university knows to be my friends.

. quales neque candidiores

Terra tulit, nec quis me sit devinctior alter.

His principles misrepresented.

Without the assistance of these friends I must have sunk under the weight of prejudice with which the twenty-seven endeavoured to bear me down. Sir, I was pointed at as unfit to breathe this air; my religious and political principles were totally misrepresented; and such were the insidious arts used, that nothing but this publick appearance could ever have given me an opportunity of vindicating my conduct and character.

His declaration of belief in God.

Sir, I have been represented as an heretic, deist, infidel, atheist. Shall that man be called an atheist, who firmly believes in the existence of one God, the parent, the protector, and governor of the universe? Shall he be deemed an atheist, who declares, and has always declared his conviction of the being of the first cause in the words of the church of England: 'there is but one living and true god, everlasting, without body, parts, or passions, of infinite power, wisdom and goodness, the maker and preserver of all things visible and invisible?' Is this the language of an atheist? Is a person, Sir, to be reprobated, who maintains these sentiments?

But,

In Christ.

But, Sir, I may be considered if not an atheist, yet as an infidel. Shall he, Sir, be esteemed an infidel, who, for the second article of his creed, grounds his hope of salvation solely on Jesus Christ? Who looks upon his saviour as a person * sent from heaven to be the means of the greatest happiness to mankind? Is he an infidel who declares his saviour to be the great mediator between god and man, that his saviour gave himself up as a ransom for all, and through whom alone is eternal life, the free gift of god, bestowed upon a sinful world. However we may differ on other parts of our saviour's character, we certainly unite in these principles, which are the essential points of a christian's faith.

The third great point of his faith.

In the third article of my belief, this whole audience, if we except the twenty-seven, unite with me. The belief of the two former articles, unless sanctioned by a firm conviction of the latter point, and the necessity of acting under that conviction, appear to me of little consequence. We may boast of our knowledge of and acquaintance with god, we may confound every gainfayer on the terms of our salvation, yet, if we neglect the principle of universal benevolence, our faith is vain, our religion is an empty parade of useless and insignificant sounds. That every christian is bound to entertain sentiments of universal benevolence, to love his fellow creatures of every sect, colour or description, is the third grand point of my faith. If any one, Sir, should ask me, to what sect I belong? my answer is, my sect is not confined to age, colour, or country. I am a firm believer in the truths revealed by God, but I usurp no authority over another man's conscience. Our lord and saviour Jesus Christ is the head of my sect,

* I am not sure that I made use of the words 'sent from heaven, or coming down from heaven,' but in either case they are to be considered as scriptural expressions, and consistent with my opinion, that Christ did not so exist in the eighth century as he now exists.

he has laid down the rules of its faith and discipline. No one can encroach on his authority. His disciples are to be found in all nations and countries, of every age, language and colour. They may meet in places appropriated for publick worship, or they present themselves in private only before their god and father, the god and father of their saviour: but, wherever they are, they cannot persecute for opinion, they cannot treat their neighbour injuriously for any religious persuasion, they are connected together solely by the ties of universal love.

His political principle, misrepresented by the twenty-seven.

Since my religious opinions have been so much misrepresented, it is not surprising that equal attempts have been made to hold me up, on account of my political principles, as an enemy to my country. Sir, I have been ranked among that visionary herd to which it has lately been the custom to affix the name of republicans and levellers. Is it possible, Sir, to conceive, that a person educated as I have been, should entertain levelling principles? Is it likely that one who is accustomed to spend his life in study, and who, if such principles prevailed, would have no possible means of obtaining a subsistence, is it likely, Sir, that he should rank himself among levellers? The supposition is absurd and ridiculous. There is not, I am convinced, one man in this assembly, nay, I will go still farther, I do not believe that there is one man in this

Assembly, who ever dreamed of such a principle. My opinion on this subject is the same with that of the bishop of Llandaff, the principal of the man, who stands forward here as promoter in this nefarious cause. The bishop has explained what some men call the levelling principle, or the principle of equality, to be that which every englishman takes a pride in maintaining, an equality of rights. That the rich shall not oppress the poor, nor the poor riotously
 attack

attack the rich, that they shall be all equal in our courts of judicature, these are the true principles of equality. Or, I may explain myself still farther by what takes place among ourselves. We all come from our respective schools with different qualifications indeed, but in the eyes of the university we are considered as equals. We are employed in various exercises, we have opportunities equally given to us all of distinguishing ourselves, and when the inequality takes place, it is, or ought to be, from merit alone, the reward of the industrious use of our talents and our time.

of republicanism. Sir, the idea of an englishman entertaining the levelling principle, is absurd, and is countenanced only by those associations, which endeavour to set us at variance with each other: and the term republican is employed for the same odious purpose. I have read much, Sir, on the subject of government, and by spending the greater part of three years in different tours on the continent, have had frequent opportunities of comparing with our own the various forms which prevail abroad, and I maintain that, excepting the small democratical cantons of Switzerland, we have the greatest claim to the title of republicans of any nation in Europe. It to be an advocate for the just rights of the people, it to conceive that liberty depends on the people declaring their sentiments by representatives in parliament, it to contend strenuously for the independence of the house of commons on every person except the people, it to wish for a better representation of the people, it to be, Sir, are the sentiments which will entitle men or ladies to the name of republican. I do so myself, and I am a republican. I consult in the privacy of my bath-room, and I being an englishman, I suppose I am a republican. There is therefore, Sir, no such thing as a republican or a republican man, who does not wish to be a republican.

asserting our privileges, which set us far beyond the other nations, it does not follow by any means, that we would usurp the prerogatives of the first magistrate, or encroach on the rights of the lords of parliament.

He is accused of rejoicing on the french constitution ;

But, Sir, I am accused of a still greater crime, I rejoiced at the success of the french revolution. Yes, Sir, I did rejoice at the success of the french revolution, and is there an englishman, who did not exult on this occasion? At what period did I rejoice? was it not at the time when every good man rejoiced with me, when tyranny received a fatal blow, when despotism was overthrown by the united efforts of all orders of men in an extensive empire? Was it not, Sir, at the time when that horrid dungeon was destroyed, in which had been tormented so many wretched victims of caprice and effeminate cruelty? Was it a crime, Sir, to rejoice, when the whole nation was of one mind, and this university thought it a duty to impress the sentiment on our young men, by giving them as a proper subject for their talents, the taking of the bastille? It was glorious in the university to unite with the general voice, and in the most publick manner to express its indignation at tyrants and tyranny. I did, Sir, rejoice at the success of the french revolution: but does it follow, that I was pleased with the scenes which succeeded, that I now look with joy and not with horror on the dreadful outrages to which that country has been exposed? The massacres and bloodshed, disgracing so noble a cause, have pained every lover of freedom; and, viewing the conflicts of the most horrid passions of the human mind, we have been left in a wretched state of suspense, and not having sufficient grounds for uniting fully in our wishes for the success of any party, we have conceived, that silence on french affairs, is most advisable.

of corresponding with
the national assembly.
bly.

If to exult at the approach of freedom to a great and powerful nation was a crime, with what eagerness was the news circulated, that to make up the measure of my iniquities, I corresponded with the national convention! In laying this to my charge, they did me the honour of uniting me with four gentlemen of the most respectable character in this university, and as I am convinced that they would do nothing unworthy of the character of englishmen and academicks, the accusation, though intended to bring on me as much publick obloquy as possible, was rendered of less effect. As to myself, Sir, I here declare that neither directly nor indirectly did I ever correspond with the national convention, and I make no scruple of saying, that with respect to the gentlemen, with whom I was supposed to be associated in this transaction, I do not believe that any one of them was ever engaged in such a correspondance. Not, Sir, that I think there was any disgrace in corresponding with the national convention, but so obscure an individual as myself could lay no claim to the notice of that assembly. If I could have suggested any thing to promote the welfare of that assembly and the nation, which it represented, I should certainly have taken pleasure in doing it. They were our friends, there was no war declared between the two nations, they deserved our friendship, for they had broken the bands of slavery, and aspired to the honours of freedom.

division of the dis-
course.

Having thus endeavoured by an explicit declaration of my sentiments to remove the calumnies which have been so industriously circulated respecting my religious and political principles, I come now to the more immediate object of my defence. I am accused of publishing a certain book, and by that publication of impugning religion as established by publick authority, and by such impugning, of violating the laws and statutes of the university. My defence is
notoriously

naturally divided into three heads. The second is branched out into four articles. In one, I am charged with defaming the liturgy; in the second, with calling the worship of the church of England idolatrous; in the third, with asserting that all ecclesiastical courts, ranks and titles, are repugnant to the spirit of christianity; and in the fourth, with profaning and reviling the most sacred offices of the church. Under the third head are mentioned two laws which I am supposed to have violated, the one a statute de concionibus, the other a grace passed in the year 1603. Of all these I shall treat in their order, and for that purpose I request that the second article in the charges delivered to me may now be read by the officer of the court.

Here the second article was read.

‘ 2d. Also, We article and object to you the aforefaid William Frend, That in the present year of our lord one thousand seven hundred and ninety-three, you did publish, and cause to be dispersed within this university, a scandalous book or pamphlet, of which you are the author, intituled, Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793; which said book or pamphlet is annexed to these presents, and prayed to be admitted as if inserted herein: and we article and object as above.’

Promoter's idea of personalities. Sir, I am accused in this article not only of publishing a book, but of publishing a scandalous book: and here I cannot help admiring with what modesty and address the promoter in summing up the evidence against me requested that, as on his part all personalities should be avoided, the same might be required on the part of the defendant. Well might he
be

be anxious to preclude me from all personalities in my reply. Satisfied with the abuse which he and his adherents had before so liberally bestowed, he might well be content to refrain from further personality, provided I might be withheld from expressing my just sensibility and resentment. Doubtless he had a right to make this request, as there is no personality in declaring a member of the senate the authour of a scandalous book! It is not at all personal to assert that Mr. Friend is unfit to breathe the air of this place! It is by no means personal to endeavour to deprive him of his degrees, and to expell him from the university! Had I indeed, Sir, taken notice of a late publication of the learned promoter, had I asserted that the work, which he has given to the publick under the sanction of the university, is a disgrace to a man of letters, that after all the labour bestowed on it it abounded with so many and such gross blunders, as instead of a fac simile it was more properly speaking a fac contrarium, that his prolegomena were filled with quaint allusions and inaccuracies of expression, at which a boy in the lowest forms would blush; had I asserted such things of the learned doctour, I should have been called a dealer in personalities; but, when he accuses me of writing a scandalous book, then, Sir, it ceases to be personality!

Let him not then esteem me personal. I will not charge him with reading scandalous books, I will not accuse him of vitiating his taste by the perusal of those vile and profane authours of antiquity, which to our shame many of us still keep in our rooms. This would be scandalous indeed. The learned doctour is better engaged than in commenting on a Cicerone or a Plinios. He is not worth the pains of an author who has ceased to have any communication with the world or with mankind, and we cannot but admire the fire and vigour which he has derived from the enchanting influence of a first class scholar, Theodorus Beza, and Martin Bernardinus.

Though

The charge false. Though, Sir, I disdain every species of personality against this promoter, I must be allowed to say that his charge is false. The book entitled Peace and Union is not a scandalous book, it is not deemed a scandalous book by some of the most respectable members of the houses of lords and commons, it is not esteemed a scandalous book by several very distinguished characters in the literary world, and in the judgement of many persons among us eminent for their learning and abilities, this work so far from being deemed scandalous, is thought to contain a variety of topics of the utmost importance to the state, and deserving the attention of every lover of his country. With all these I most cordially unite in wishing, that instead of blackening and defaming the character of the writer, the promoter and his twenty-seven had the candour and ability to answer the publication.

But whether the work is scandalous or not, let us consider, what proofs are brought by the promoter that I am the authour of it. After so many days employed by him in endeavouring to prove this point, it would be a very bad compliment to pass over without some notice, the labour in which he has so strenuously exerted himself. On this account it will be necessary to make some previous remarks on the proofs of authorship in general, from which we shall easily perceive with what shallow proofs the inquisitorial spirit is contented, when the ruin of an individual is the only point to which its zeal and malice are directed.

Marks of authorship. There are two ways of discovering the authour of any work, which may be called the external and internal marks of authorship. The external depend on two things, either on the authour himself, or persons, who have had the means of being acquainted with the authour's proceedings. Should a person declare himself to be the authour of a given work, though this is not in
itself

itself an absolute proof, it is sufficient to subject him to the praise or censure which would have been bestowed on the authour. If the authour does not choose to avow himself, before those, who might be supposed entitled to question him on the subject, and it is asserted that he has elsewhere made this discovery, we must be particularly careful what credit we give to the testimony of the witnesses, who come forward on such an occasion. We must examine their characters, whether they are friends or enemies, whether they are likely to speak the truth fairly and openly, or whether the zeal of religion might not induce them to hazard a pious fraud by way of getting rid of a dangerous opponent to their fantastick theories. Besides, we must consider, whether they are competent to give a legitimate proof: if they can neither write nor read, it will avail but little, that they heard a person call himself the writer of a given work, as the work before the court may be of a different nature and tendency from that, whose title only was mentioned in their hearing.

Internal marks. The internal marks of authourship are various. It is unnecessary before this learned audience to investigate the methods, by which many of us, from having perused the writings, or heard the discourses of any one, can pronounce with ease, whether a work in question belongs to him or not. They can point out the beauties or the deficiencies of his stile, his plan, his language. They can say at once, such a sentence was certainly the effusion of this writer's zeal, or, again, none but that doctor could have possibly indited this paragraph. For instance, who, that has read the prefaces of the learned promoter, or has heard his distinguished eloquence in the divinity schools, can doubt that he is the authour of the late prolegomena? Could Cicero or Livy have written in such a manner, could they have ventured on such flights of fancy, could they have raised themselves to surpass the

mind with such beautiful changes of cases and those noble deviations in the moods of verbs? Are not their metaphors feeble when compared with those used by our sub-professour? Where shall we find such latinity, where shall we meet with such beautiful specimens of quotation?

Dr. Kipling wrote his own prolegomena; No one, who has the least pretensions to critical acumen, would, on balancing all these circumstances, doubt that Dr. Kipling, as his signature declares, is and could alone be the authour of his prolegomena. The work itself also carries internal marks of the editour. The perfect resemblance it bears to the original, having no other difference than that in several places the type is turned topsy turvy, convinces us that no one but the promoter has any claim to the merit of having corrected the press.

but it is not punishable by law. But, Sir, strong as these internal marks are, and stronger perhaps cannot be brought, I must contend that they can be of no weight in a court of justice. It will not suffice to say, the stile is the same, the language is the same, the errors are exactly such as might be expected from this authour; still no upright judge would be contented. The stile and language may be imitated; there have been frauds even in the literary world, and nothing but external proof can make an authour amenable to a court of justice for any publication. Hence in the present case, when the promoter wanted to prove the pamphlet entitled *Peace and Union* to be mine, from a fancied resemblance between certain passages in it, and others in a pamphlet written four years ago, the court very properly rejected the attempt.

Internal marks. Many external marks are not available. Neither the title-page, nor publick estimation, nor writ-

* See the learned promoter's preface to what he calls a fac simile of the *Codex Theodori Bezae Cantabrigiæ*.

ing,

ing, nor the delivery of books are, separately or in conjunction, sufficient proofs of authorship.

Title pages. Dr. First, with respect to title pages, I shall, Sir, White's.

bring two proofs, which I have no doubt will convince every unprejudiced mind, that my opinion is well founded. The one shall be taken from the university of Oxford, the other from our own. We have all of us heard the fame of a celebrated professor of oriental literature in the university of Oxford. Some time ago he published under his own name a volume of sermons, which he had also preached in the university church. They were admired by every body, were held up as models of composition, as a complete victory over the hereticks, particularly those, who go by the name of Socinians. Nothing could be urged against them, they were unanswerable, so great a champion as the oriental professor was invincible. So much and so universally were they esteemed, that a late lord-chancellor, well known for his love of pure religion and his regard for the interests of the church, felt himself called upon to reward such singular merit, and actually bestowed on the person whose name they bore a handsome piece of preferment. Who could then, Sir, entertain the least doubt of ascribing infinite merit to this learned writer? Who at first supposed that this great man could get up and preach before the university sermons not his own? The supposition would have been treated with contempt, if a concurrence of circumstances had not justified it, and the world is now in possession of the proof, that these noted sermons owe their celebrity to the united efforts of a once eminent dissenting minister and a doctor of distinguished merit of our own university *.

* Mr. Badcock and Dr. Parr.

See White's sermon for the last proof, and the controversy on them, in pamphlets by Dr. Gualter, Dr. Parr, and Dr. White.

Kipling's Beza. A book lately appeared among us under the title of *Codex Theodori Beza Cantabrigienfis*. Now, Sir, not venturing to trust to my own interpretation of these words, I consulted a learned friend, who declared it could mean only the codex of Theodore Beza, a Cambridge man. Was Beza then the authour of this work, or was he not? Did he write it? Did he compose it? Did he publish it? No such thing. He wished, that it might not be published. So far from his writing or composing of it, it appears to be a transcript of the four gospels and the acts of the apostles, which he purloined from a monastery in the course of the civil wars of France, and either not liking the various readings contained in it, or fearing that it might be claimed by its proper owners, he made a present of it to the university, to be edited in a future age by some promoter, though not so learned, yet as bigotted and bloody-minded as himself†, who should make the great discovery, that Beza was a Cambridge man.

Thus, if title pages are to be taken as proofs of authorship, we may attribute to the oriental professor of Oxford a variety of errors, which arose solely from his friends being unacquainted with the writings of Mohammed and his best commentators, or celebrate him for the splendour of a diction which is not to be expected from one of his indefatigable industry, in discovering the roots of words and exploring the sources of Egyptian literature. The latinity also of the learned promoter might not only tend to persuade us, that Beza is a Cambridge man, but fix on him the stain of various heretical opi-

† The learned promoter is very fond of this question: Christians are allowed to eat blood. *Licet christianis sanguine vesci*, and the university has been abundantly satisfied with it in his divinity schools.

ons, to which his codex is supposed to give a sanction, and make him liable to a summons into the vice-chancellor's court.

Publick report. Publick estimation is also no proof of authorship. We have all of us either seen or heard a variety of epigrams, circulated not many years ago, full of reflections and scurrilous remarks on the heads of colleges and men high in rank and office among us. For some time it was the fashion to ascribe them to one of our most celebrated mathematicians. They went under his name. Every one pronounced them in common conversation to be his, and if he had not expressly contradicted the report by openly disclaiming them, his fame might have gone down to the latest posterity rather as a satirist than a mathematician. Thus would our first character for eloquence have been deprived of an honour which is due to him alone, and which it is to be hoped, he will enjoy henceforward unrivalled and without dispute *.

Hand-writing. The hand-writing of a person is still less a proof of authorship, as we all know how easily it may be forged, and a person must have attained either great sagacity in the art of distinguishing hands, or great powers of swearing, before he can ascribe a writing to any individual. Besides, should the writing be proved to be that of any person, it does not follow that he is the author of the composition, he may have been only a copyist.

* Mr. Mansell, the public orator, took himself very much hurt at this paragraph; but those who have known him for many years, have seen no reason why, that the epigrammatist should have preferred to offend the first, who would have thought it more to his honour to have passed the public like a man of perfect conceit, than to relate a story, which he could hardly avoid that Mr. Mansell should have been angry, should he have been so saying, the blame of a calumny, given out by him, would have been on him.

Delivery of books. I need not dwell a moment on the absurdity of supposing, that the delivery of books can prove authorship, as in that case we shall convert all our bookfellers into authours, or at least make the deliverers of any work into the feller's hands members of the literary republick.

Promoter's proofs. Having thus, Sir, considered the general proofs of authorship, let us now examine those which the promoter has brought in favour of his assertion. These are of two sorts, either by evidence or by writing. By the evidence of bookfellers and their servants, a printer of a publick paper, and certain gentlemen of the university. On the evidence given by the tradesmen and their servants I have not a single reflection to make. Having no sinister views, nor any other object than a plain statement of facts, they told what they knew with a plainness and integrity which must do them credit in the opinion of all who heard them. But to what did all their evidence amount? The bookfellers and their servants relate that they received the pamphlet entitled, Peace and Union, either from Bowtell's boy or from his house, except that one declares that he received twenty copies from myself at my own room. The copies at Bowtell's appear to have been brought by the St. Ives carrier, and Mr. Friend is said to have ordered certain packets to be sent to the bookfellers and to his friends in the university. The printer declares, that he received the copy of an advertisement from Mr. Marsh, to be inserted in his paper, as also an order from Mr. Friend in person to repeat the advertisement, and afterwards a note from him stating the price of the pamphlet. Being asked whether he could swear to my hand-writing, he said all that an honest man could on such an occasion. He was too well acquainted with the nature of an oath, and the mistakes which a

man

man even in his profession might make, to swear positively to the hand-writing of any person. Yet, Sir, I may venture to say that he has seen me write oftener and seen more of my hand-writing than any person in this audience, but he would give his conjectures only, and could not be brought by any means to make those round assertions, which we heard with astonishment from a quarter, whence they were least to be expected*.

Mr. Lloyd's evidence. Mr. Lloyd's evidence, Sir, is too curious to be passed over in silence. He appeared in court, as it should seem, in a mode prescribed by the promoter with a book in his hand. Enter Mr. Lloyd. Pray what have you in your hand, says the promoter? A book. What book is it? Peace and Union. Where did you get that book? At Mr. Lunn's shop. What did you get it for? To bring the charge home and to convict Mr. Friend, replies this unbiaſſed witness, who being questioned concerning some transactions at the vice-chancellor's lodge, declared that he did not come prepared to answer such questions.

Written letters. The evidence from writing is chiefly confined to certain letters said to have passed between Mr. Watſon and myself. The letters are produced in court, and to prove them mine, step forward Mr. Kilvington and Mr. Plampin,

..... Arcades ambo
Et jurare pares, et respondere parati.

They look on the notes, they are asked whose hand-writing it is. For the first note, Mr. Friend is the reply: for the second and third Mr. Plampin is not quite so positive. To this proof, that I wrote the note, is added presumptive evidence from a conversation, which I had with Mr. Watſon on the subject of the price of spinning wool, which happened then to engage the attention of

* See Mr. Kilvington's evidence.

the university; and as I carried with me sufficient proofs that Mr. Watson's statement was wrong, I must necessarily have been the writer of the notes. There is however a better proof remaining. Mr. Watson sent a servant once with a note to me, on the receipt of which, I said, it required no answer.

Dr. Dickens. In this account of the evidence, I have been in danger, I perceive, of omitting a very important one, though for what purpose he was brought here, neither the court nor myself can possibly devise. Dr. Dickens is a clergyman well known in Huntingdonshire, and, with the singularity and vivacity of his conversation, many gentlemen in this university have been frequently entertained*: he writes sermons, which nobody reads, and generally sends me, and many others of his acquaintance, a copy of his publications. Considering him as an harmless old man, who had not forgotten the few scraps of Latin which he learned at school, I have sometimes visited him, when in his neighbourhood, and he occasionally indulges me with a sight of his sermons in manuscript. In return, he might be thought to have a claim on me for a copy of my publications; but he is brought here to relate a circumstance, which taking place in Huntingdonshire, cannot be made an object of enquiry in this court. The fact is simply this: he met me one day in the house of a stationer at St. Ives, where I frequently, as is usual to persons in the neighbourhood of a market town, go to execute any little commission, to read my letters, or the paper, or, if occasion requires, to write letters. Dr. Dickens found me writing some letters, and near me were some pamphlets, one of which I told him I was going to send to an old friend of his. He took up a pamphlet, and said, he must take it with him, and, in the free and easy way for which this facetious divine is noted, he bore it off, not only without, but actually against my

* See the Dr.'s. evidence, p. 32.

consent; and this book, thus taken, is, it seems, brought here to prove that it is a production of my own pen.

Such is the evidence which the promoter has collected from all quarters, sparing neither age nor sex, and on which he means to rest his position, that I am not only the publisher, but also the authour, of the book in question.

Proofs inconclusive. Unfortunately, however, Sir, for the promoter, his proofs are inconclusive. For, first, with respect to his witnesses.—Several of them are of the twenty-seven, that is, of the original body of accusers, and one, the most material, is his own servant. Besides the general objection to the twenty-seven, there is one of a distinct and separate kind, which I feel myself with infinite concern compelled to produce. It is so materially interesting both to the witnesses reputation, and my own, that I did not choose to trust the explanation of my sentiments on this head to the casual observation of the present moment, but put it down in writing, and shall make no apology for reading it from this paper.

Here Mr. Frend read the following paper.

Mr. Kilvington's
evidence.

Mr. Kilvington declared, that ‘ My studied attentions, shewn to him as they were, he believes, to all those whom I was desirous of proselyting to my own opinions, were such as to have impressed, very deeply on his mind, the recollection of my hand-writing.’

The world will be at a loss to guess, how far any attention to a person can convey a knowledge of hand-writing, unless those attentions had been signified by an intercourse of letters: but they will be at no loss to discover, that the proof of my hand-writing was the least part of Mr. Kilvington's design. It was to gratify his own malignity, that he seized the opportunity of asserting

ing a falsehood, which he had forgot how easily I could repel. Had I been permitted to try his skill in the interpretation of hand-writing, he would have been abashed to see, under his own hand, an acknowledgement which totally did away the slander of such an imputation. But I was told, that to urge the reading of his letters then, would weaken my defence. How, Sir, am I to defend myself now? Will this remonstrance be entered on the records? Will these letters be inserted in the *acta curiæ*? No, Sir, there will still remain an accusation without an answer—an accusation compared with which, the present charge is absolutely nothing. Sir, how slightly soever others may esteem—how slovenly soever others may discharge the duty of a tutor in giving lectures, in my idea, it was one of the most sacred deposits which could be confided in the hands of man. To betray this trust by prejudicing young minds, in those points where they ought to be left to the fair result of their own enquiries, would be base and treacherous: yet this is the treachery with which I am charged. My name is to go down to posterity, loaded with the infamy of practices I abhor; and from the imputation of which you were in vain solicited to protect it.

I do not mean, in vindicating my own conduct, to retort the accusation upon another; but I mean to disclaim, in the strongest and the most publick manner, in the face of this court, and of god, a practice which I abhor.*

Mr. Kilvington cannot, I suspect, have duly considered the extent and import of the word to profelyte. The
zeal

* The letters thrown down, were two received by me in the year 1791, the one dated July 19th, the other July 24th, which I accidentally found about a month after the last meeting of the twenty-seven at the Vice-Chancellor's lodge. On finding that Mr. Kilvington had taken so active a part in the prosecution, I
shewed

zeal of profelyting is of a peculiar nature, appropriated in scripture to a particular body of men. Ye, says our saviour, compass sea and land to make one profelyte.

shewed them to some of my friends, as instances of the gratitude of the saints. The greater part of them is taken up with the business of college testimonials, and at the conclusion of the first Mr. Kilvington's words are :

I shall make no further apology for the trouble I am now giving you ; but must say, that it will give me the greatest pleasure to render you any services in my power, either in this, or any other part of the world which I may chance to be fixed in.

I am, with great respect, dear Sir,
Your very faithful and affectionate servant,
EDWARD KILVINGTON, Jun.

In the second letter, he tells me, after some further business on the testimonials :

The cure, which I have engaged to accept, consists of two parishes, Knockholt, and Downe, in the county of Kent. They are situated in a most delightful part of the country, between Bromley and Sevenoaks. The present incumbent is the minister of our parish church ; and, as he will be desirous of residing occasionally for a week or two, I have engaged on those occasions to officiate for him in London. The allowance is to be fifty pounds a year, together with the use of the parsonage furnished and provided with attendance. I am persuaded you will be happy to hear of my success, and I have therefore given you so circumstantial an account.

I must again apologize for the trouble which I am presuming to give you, especially as I can never hope for an opportunity of discharging the obligations which I already labour under.

I am, with great esteem, dear Sir,
Yours, most affectionately,
EDW. KILVINGTON.

Now is it probable, that, if I had endeavoured, with studied attention, to draw off Mr. Kilvington from his church, he would have given me so circumstantial an account of his entrance into the office of minister in that church ? Would he have been persuaded, that I should be happy to accept of a salary of £500 a year ?

To whom does he say this? To whom but the scribes and pharisees? And who were they? Take a few traits of their character, as it stands afterwards marked in the language of our saviour himself. All their works they do to be seen of men: for a pretence they make long prayers: they outwardly appear righteous and unto men, but within are full of hypocrisy and iniquity.

I am well aware how apt we are to apply antient descriptions to present manners; and I should not wonder if the world were ready to discover in this place a set of men, to whom the pharisaical character applies at least as strongly as to me: but let me caution them against rash judgement; the Margaret professor has amply vindicated the character of those people from such an imputation. Bigots, and zealots, says he, are wonderfully expert in making infidels; they never, I believe, convert any*.

Mr. Frend ceased reading, and continued his discourse.

Maxims of civil law. I have said that many of the witnesses were of the twenty-seven, and one is the promoter's own servant. Now, as the determinations of the court must be made secundum jus civile, it is evident that these witnesses are inadmissible. These are the maxims of the civil law.

If the witness has any interest in the fact concerning which he is desired to give evidence, he will be rejected. For one cannot be sure that he will make a declaration contrary to his own interest.

Nulius idoneus testis in re sua intelligitur. l. 10. de testib.

The persons who have a dependance on the party, who would make use of their testimony, such as menial servants, being suspected to favour the interest of their

* See Mainwaring's dissertation before his sermons.

master, and to declare only what he desires, their evidence ought to be rejected.

Idonei non videntur esse testes, quibus imperari potest, ut testes fiant. l. 6. de testib.

Testes eos quos accusator de domo produxerit, interrogari non placuit. l. 24.

With these maxims of the civil law, the opinion and the practice of our courts of common law agree. Courts of justice, says lord Mansfield, do not sit to weigh what degree of temptation the minds of men are capable of resisting, but to take care, that they shall not be exposed to any temptations whatsoever. But even, if such evidence as that of the twenty-seven, and the servant of a prosecutor, were admissible in vulgar courts, in this, from the rules of the civil law, it must necessarily be rejected.

Hand-writing. The similarity of hand-writing, is a species of evidence which, in a cause of this nature, is equally inadmissible. The memorable and excellent Algernon Sidney was convicted by a Jefferies, on a comparison of hands, yet, to the honour of our legislature, his attainder was reversed; and it is declared in the act of parliament passed for the reversal*, that comparison of hands is no evidence of a man's hand-writing in criminal cases, and the same doctrine is acknowledged and laid down in the state trials, and Hawkins's pleas of the crown†.

Distribution of books. The whole that has been brought forward on the distribution of books, falls to the ground, from the single evidence of Mr. Bowtell, who is my agent for the distribution of books, and has informed you, that he has frequently received from London, and other places, parcels of books of various authors, to be sold or dispersed by him on my account. It is also in the recollec-

* WILLIAM III. Mar. c. 7. of the private acts.

† HAWKINS, c. 11.

tion of a considerable part of this audience, that I have frequently distributed myself books in the university. During the agitation of the questions on the slave trade, and the repeal of the test act, I distributed a vast number of books in this place, and carried, in person, to every head of a house, a valuable work of bishop Hoadley on the liberty of conscience. Indeed I speak, I think, within compass, when I say, that ten thousand books of various sizes, written by various authours, have been dispersed from this place, either by myself, or by Bowtell, under my direction. The distribution of these books, therefore, is no proof of my being the authour of this work; for, if such a proof is allowed, on the same principles I may be called to an account for many sentiments totally opposite to my own, advanced by a variety of writers.

Mr. Watſon's wool-
ſpinning, It would take up too much time to examine ſeriouſly the evidence given by Mr. Watſon, and a long and irrelevant correſpondance about the price of ſpinning wool. Well indeed, Sir, might you expreſs your curioſity to know how this buſineſs could poſſibly affect the queſtion before the court, or what ſtrange reſemblance the promoter had found out between wool-ſpinning and writing a book! There is not a word about wool-ſpinning in the pamphlet in queſtion. Mr. Watſon indeed ſays in one of his letters, that he did not refer to Mr. Frend's publication, and Mr. Frend replies that he did not refer to his publication, but ſolely to an aſſertion of Mr. Watſon reſpecting wool-ſpinning. But this was quite enough, the ſecret was now out, Mr. Frend had ſaid his publication, and the familiars, who were upon the watch for every incident, ſeized this fatal note with eagernels and bore it off in triumph. It was read at the matter of arts coffee-houſe, then at St. John's, from thence it travelled to Calus to the ſub-promoter Mr. Belward *,
thence

* Mr. Belward got up ſome time after, and with ſome warmth declared, that the notes were never brought to him. How this

thence to the promoter; all read, all rejoiced, and all with the same sagacity concluded, that Mr. Friend must certainly be the authour of Peace and Union, because he he did not, he expressly said, refer to his publication. Thus the promoter boldly told the court, that the pamphlet entitled Peace and Union must be Mr. Friend's, because he supposes that Mr. Watson and Mr. Friend could not be talking of any other publication; whereas it is well known, that Mr. Friend has written several books, and during the course of the winter he has certainly been engaged and is now engaged both in writing and publishing. On the whole the remark of the two countrymen seems to me the best that can be made on this wool-spinning business. Seeing Mr. Watson standing so considerable a time in a very forlorn situation, examined by the promoter, confronted with other witnesses, questioned by the bench, again examined, again confronted, reading letters about wool, and answering interrogatories on the same subject, alas! poor gentleman! says one to the other, he is guilty, he certainly stole the wool.

The whole evidence must and void.

The whole evidence null and void. Thus, Sir, I have examined this voluminous body of evidence, which the promoter has taken such pains in compiling and arranging, and with which he has fatigued us for so many days. Its little worth is apparent from the remarks already made on it, and the promoter seems to have been conscious of the weakness of his cause, and desirous that it might fall to the ground, as he has taken a step which renders the whole of his proceedings null and void. Sir, I contend that the taking of the evidence out of court, and giving of it to the per-

and the people are not to be deceived. I have the honor to be,
Dear Sir, your friend and coadjutor, for I am sure that they
will be the last in this country. I will be very glad to see
you and to hear of your progress. I am, Sir, very respectfully,
Dear Sir, your friend and coadjutor, for I am sure that they
will be the last in this country. I will be very glad to see
you and to hear of your progress. I am, Sir, very respectfully,

son who is most materially concerned in converting it to his own purpose, renders it both on the principles of the civil law and the law of England incapable of being used by the judges of this court: it has lost its authenticity, it cannot be considered as the same evidence, it cannot be made in this or any future court of review the foundation of a judicial decision.

The civil law says: It is not enough to give the declaration of a witness the effect, which it ought to have in justice, that the witness himself writes or causes another to write his evidence, and that he gives it or sends it to the judge, but it is necessary, that he appear before the judge, and that the judge himself interrogate him, and put down his declaration in writing.

The declarations, Sir, as well as the interrogatories were put down in writing by the registry, and they have since been out of court for some days in the possession of the promoter. That they are vitiated by such a step is evident: for, how can the judge now know that the interrogatories and the answers, by which he is to determine the cause, are the same that were committed to writing in his presence? The common law of England is equally tender with respect to evidence, and does not permit a cause to be decided by a jury by any other evidence than that which was produced before the court, and if there is the appearance only of any other evidence being laid before the jury, the cause falls *ipso facto* to the ground. This appears clearly to be the law of England from the case of *Metcalf and Dean* (Croke's reports, folio 189) in which a jury withdrew out of court, and, after having called a witness to repeat the evidence delivered in open court, returned and gave their verdict for the defendant. This was represented to the judge, and the jury in vindication of themselves said, that the evidence given to them privately was the same in effect as that given in open court, *et non alia nec diversa*.

diversa. The judge however considered this private examination by the jury as illegal and set aside the verdict.

If then the mere repetition of a viva voce evidence in presence of a whole jury, who could not be supposed at all interested in the decision, was sufficient to set aside their verdict, how much more strongly must the rule obtain in a case, where the questions and answers are distinctly repeated and put down in writing, and the prosecutor has been permitted to keep the writing in his own possession, and to garble it as may best suit his own corrupt purposes.

Here the commissary interposed and desired Mr. Frend to understand, that these minutes were no record, they made no part of the *acta curiæ*. Mr. Frend replied that in his idea this made no difference in the case, they certainly constituted the body of evidence by which the court was to decide. Then addressing the judge he continued.

On these grounds, Sir, I contend, that there is now no evidence before the court, and the judge, who is bound by our statutes to determine *secundum jus civile*, has nothing before him, on which to ground a judicial decision: therefore, after having read my objections to several witnesses, I shall beg leave to protest against this particular informality, and the use of the supposed evidence, returned by the promoter to the registry, either in this or any other court of justice.

Here Mr. Frend read the following papers:

I.

I object to the promoter's mode of producing evidence as misrepresented and unavailing in any court of justice.

1. As the witnesses were not only examined in the presence and the hearing of each other; but as the witnesses were repeatedly reminded not only of what they had said before, but also of what the preceding witnesses had testified.

2. As it was apparent, in many instances, and expressly avowed, by several of the witnesses, that the promoter had himself directed the evidence which they were cited to give, and prepared with materials for his purpose.

3. As the witnesses were not allowed to go through their respective evidences at once, but were called and re-called frequently, in a manner totally contrary to the practice of all other courts.

4. As the interrogatories were very frequently insidious and leading questions.

5. As witnesses were personally confronted, in order to prove identity, and not left, as they usually are, to the casual discovery of the person.

II.

1. I object in particular to the evidence of Harvey Alger as inadmissible, he being the menial servant of the promoter of the cause.

2. I object to the evidence of the Rev. Mr. Lloyd, he being one of my original accusers and directors of the prosecution, and having expressly avowed in court a disposition totally irreconcilable with the purpose of candid testimony.

3. I object to the evidence of the Rev. Mr. Kilvington, he being also an original accuser and director, and having been uttered, in the course of his evidence, an irrelevant

relevant and deliberate falsehood, which ought to invalidate every other part of his testimony.

4. I object to the evidence of the Rev. John Plampin, and of Mr. Mathew, they having also been original accusers and directors, and having besides already prejudged the cause in my own college, and condemned me without giving me an opportunity of making my defence.

III.

I object to the validity of the minutes of evidence in the state in which they now appear since they have been taken out of court and put into the promoter's hands ; and I must beg leave to enter my protest against this informality, which is utterly repugnant to the established forms of law.

W. FRENCH.

Protest of the UNDERSIGNED against the validity of the evidence in this cause.

The witnesses cited by the promoter of this cause having been examined in the court upon interrogatories proposed by the said promoter, and taken down in writing by the registry of the court before they were put to the witnesses, and the answers of such witnesses having been also taken down by the registry, the evidence of the several witnesses so recorded by the registry, ought to have been kept in court as an official minute of such evidence ; but the original minutes of the evidence, as taken in court, having been delivered out of the hands of a proper officer, and put into the custody of the promoter, I do protest against such evidence, and do declare that it is not its authenticity, and cannot be considered as the testimony of any witness ever examined, either in

this court, or any future court of review, the foundation of a judicial decision *.

W. FREND,

The vice-chancellor now asked the registry, whether the minutes appeared in any part to have been at all altered? The registry answered, No. The jury, Sir, said Mr. Frend, in Metcalfe's case, declared the same: the witness had not varied a tittle: the evidence was *nec alia nec diversa*. You know, Sir, addressing himself to the commissary, you know the civil law better than I do. I submit the case to your consideration.

Mr. Frend then desired the third article in the charge to be read.

The article was read.

‘ 3d. Also, We article and object to you the aforesaid William Frend, That in the twenty-ninth page of the aforesaid book or pamphlet you have defamed the public liturgy of the established church, by affirming that ‘ it is very far from the standard of purity in doctrine, which is required in such compositions :’ and we article and object as above.’

Liturgy defamed Sir, I am charged in this article with defaming the publick liturgy of the established church. Defaming the liturgy !—defaming, Sir, is a harsh word—a very harsh word, and ought to have been well considered before it had been applied to any observation, which the authour of Peace and Union makes upon the liturgy. I will beg leave to read the passage, as it stands in the original, not in the garbled and mutilated condition in which the promoter has thought fit to produce it. ‘ The Liturgy of the church of England is a composition derived from the mass-book of Rome, over which, if it has in some respects a manifest superiority, it is very far from that standard of purity in its arrangement, language,

* These notes were afterwards delivered into the vice-chancellor's hands.

or doctrine, which is required from such compositions.' Is then the liturgy a divine or a human composition? If it is a divine composition, to assert that it is the least removed from the standard of purity, would be certainly defamation; but if we allow it to be human, it certainly cannot be defamation to affirm, that it may, nay, by archbishops and Sir, that it must be imperfect. Is the author of Peace and Union then the only person who esteems it imperfect? Is it not acknowledged to be imperfect by the wisest and brightest luminaries of the church? I appeal to archbishop Sancroft, who, on account of some imperfections in the burial service, declared, that he could not take upon himself the cure of souls.—I appeal to archbishop Tillotson, who wished the church well rid of the athanasian creed.—I might appeal to the present bishops of London and Ely, who, with several of their brethren, the most respectable of the clergy, had their meetings, to obtain some relief in the present mode of subscribing to the articles and the book of common prayer. Nay, that it is not defamation to suppose the liturgy imperfect, I appeal to one of the sub-promoters, to Mr. Mainwaring, Margaret professor of divinity, who, not many years ago, reprimanded Dr. Pearce, then fellow of St. John's college, for reading the athanasian creed in the chapel, on one of the appointed days *.

* Here Mr. Mainwaring got up in a great passion, and declared, that it was an absolute falsehood; that he did no such thing. Mr. Friend turned to the vice-chancellor, and offered to prove it, but was obliged to go on. Mr. Friend has been since informed, that he misled Dr. Pearce, master, instead of fellow, and he supposed, the vice-chancellor took advantage of this mistake. Indeed, this is wrong. Mr. Friend was one of the most respectable members of the university, to assert, that Dr. Pearce related this history to him. When Dr. Pearce came to the college, he told him, that he had read the athanasian creed, on the day Margaret professor had forbidden the reading of that creed, and I have to tell two persons, that the vice-chancellor was not a party to it.

~~Defects pointed out.~~ Thus supported, Sir, I should be warranted in saying, that the authour has advanced nothing in the passage quoted but what is strictly true. Let any one examine the book for himself, and he will find the best and finest part of the whole service not free from that imperfection, to which all human works are subject. The psalms, as read in the churches, are miserably defective, —they are worse; they contain sentiments totally repugnant to that charitable and humane spirit, which breathes in every page of the gospel, and is required of every follower of Christ. With what horror must a serious christian revolt from those dreadful execrations, which whole congregations unite in uttering with their mouths, while the sentiment, it is to be hoped, is far from their hearts. Let his wife be a widow, say they, and his children fatherless: let the extortioner consume all that he has: and in the same manner they go on with imprecations, which, if they are pardonable in others, are certainly unbecoming in the devotion of christians. The learned may satisfy themselves that there is an error in the translation: I know it, Sir, the original conveys no such meaning. A jewish congregation would not think itself authorized thus to devote the most depraved of their species to the extreme of human wretchedness.

Instances of imperfection might easily be enumerated, arising from various causes. Some are owing to the language being antiquated. Who would say, now, prevent us, O lord, in all our doings, when he meant to pray for succour or assistance? Why must the people in their addresses to God, be confined to a language, which, in all other cases, would express a sense totally different from their real meaning? It is to the use and the capacities of common congregations, that the common prayer should be adapted. Is it right that the people in their devotion should be left to the alternative of praying for they know not what, or of finding out their own meaning by ciphers or cabbala, or antique glossaries?

King James's opinion. To many similar defects in language, we may add others, from the nature of the arrangement, owing to the liturgy having been taken from the mass-book of Rome, over which indeed the authour of Peace and Union asserts, that it has a manifest superiority. Had he not, however, made such a declaration—had he said, that it was only as good as the mass-book, he would have had royal authority for such an assertion; and he could not have been accused of defamation without impugning the sagacity of one of our wisest monarchs. In the general assembly at Edinburgh, in 1590, king James, afterwards the first of that name in England, gave this as his opinion of our liturgy: ‘As for our neighbour kirk of England, their service is an evil-said mass in english; they want nothing of the mass but the listings.’

The speaker's opinion.

But, Sir, whatever may be the opinion of crowned heads on this liturgy, I make no scruple of declaring in publick, what I have repeatedly asserted in private, that the liturgy of England is superiour to the liturgies established by publick authority any where in Europe. I have read over many latin, greek, and hebrew liturgies: with them I have compared ours, and it has always been to the advantage of the latter. Not that it should be understood, that every part in the english liturgy is superior to every part in those already mentioned. It would be absurd to suppose, that the psalms, in english frequently mis-translated, are superior to the originals in the hebrew language, or that those parts of our service, which are translated from the greek, are better than the same parts in the greek liturgy; but, on taking the several liturgies together, and considering their various excellencies and defects, the english seems to have an evident superiority.

Speaker's note.
intention to do so.

That it was not the authour's intention to defame the liturgy, is clear, from his

own words in the same page. Does he not point out a mode of improving it, by advising that commissioners of the english church should revise the book of prayers, and propose a form better suited to the present times. Would he have said, better suited to the present times, if he meant to defame? Would he not have said that it was not fit to be used in any times? Again, he says, that the new liturgy should not supersede the one in present use; that no one should be forced to adopt it, but that it should be left to the option of each congregation to use the old or the new liturgy. Is this, Sir, the language of defamation? In recommending improvements to be made in human compositions, there can be no defamation, and this circumstance alone would be sufficient to prove the wickedness and the malice of the promoter, if they were not both apparent in his mode of quoting this obnoxious passage.

Promoter's comprehension, Sir, when the promoter read over this article, I naturally turned to the page quoted, and requested him to point out the passage which I in vain attempted to discover. He was content with saying, that it might be found there; he had left out only a few things from his own inability to understand what they meant. He did not comprehend purity of arrangement. Be it so: Is the promoter's comprehension then to be the criterion of scandal and defamation? What writer can be safe if subject to the limitations of his taste or intellect? He has long ago forgotten those writings which are intended to refine our taste at school and in this place, or a passage from a profane writer of antiquity might have informed him, that

..... Cui lecta potenter erit res
Nec facundia deferet hunc nec lucidus ordo.

How to have been added. Receding, however, as he does, every thing that favours of heathen lore, he might still have availed himself of the assistance, which
would

would readily have been given him by a writer well known for the elegance of his dissertations. That elegant formartum spectator, who sits by him as a sub-promoter in this business, would have furnished him with an explanation of the passage, and taught him that purity of arrangement is only another expression for *lucidus ordo* *.

Promoter to be indulged, when and where.

But the promoter is not only ignorant of the nature of arrangement; he considers purity of language also as an inexplicable idea. From the late specimens, with which he has favoured the world, we are certainly justifiable in allowing this point to him in its full extent. Who that has read his late prolegomena, will impute to him the least acquaintance with purity of language? If he himself was alone concerned, he would have a right, without doubt, to reject, from every pamphlet, the parts which seem to him unintelligible; but, Sir, when he brings forward an accusation, the case is materially altered. Am I to be charged with a crime from his want of comprehension? Will it be allowed in any court of justice to bring forward a passage, garbled in a manner to suit the prosecutor's designs, without any regard to the authour's meaning?

Charge invalidated. Sir, I contend that the promoter, by bringing forward a passage in this manner, has rendered his charge futile and ridiculous; it could not be urged in any court of justice; and his attempt to prove me guilty of defamation, falls necessarily to the ground. I request that the fourth article may be read.

Here the fourth article was read.

4th. Also, We article and object to you the aforesaid William Friend, That in a paragraph, contained in pages

* See Mr. Mainwaring's Dissertation prefixed to his sermons.

thirty-six, thirty-seven, and thirty-eight, of the afore-said book or pamphlet, beginning at the words, ‘The same passions,’ and ending with the words, ‘episcopal convocations,’ you affirm that the public worship of the great body of christians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context: and we article and object as above.’

Promoter reads Gil Blas. In the former article, Sir, I was accused of defamation: a more heinous offence is now alledged against me; that of calling the worship of the church of England idolatrous. On reading over this charge, I referred to the part of the book on which it is grounded, but after a very exact scrutiny, could not find, to my surprize, the term idolatrous mentioned. Recollecting, however, the character of the promoter, and considering the nature of the books with which he refreshes himself after his severer studies, I discovered at last what had led him to insert this among his other articles. The promoter, Sir, can now and then in private relax his features, and he is particularly delighted with a celebrated work, with which we are well acquainted—the *Memoirs of Gil Blas de Santillane*. Meditating one day on this prosecution, he was resolved to imitate the facetious hero of these memoirs, and to try whether he could not play as good a trick on an unfortunate academick, as the merry spaniard had done on a wealthy tradesman. Gil Blas, with his companions, dressed themselves up exactly like the promoter and the managers, and one of them, acting the part of the promoter, preceded the rest, and knocked at a tradesman’s door—it was opened by a boy, who, petrified at the sight of the holy inquisitours, in a trembling voice answered the promoter’s questions. Does your master love children? Oh! yes, says the boy, yes, my master is very fond of children indeed. Write down that this man seduces children for a sacrifice at the paschal supper. Do you ever eat pork? No, says the boy, I can’t

I can't say that we have pork often at our house. Write down that they never eat pork, that he is a jew convict. Pray does your master walk very slowly on Saturdays? Yes, says the boy, my master always walks very slowly indeed. Write down that he sabbatizes, that he never goes beyond a sabbath day's journey on a Saturday.

Borrows one of his tricks,

Pleased with this story, our promoter called together his brother managers, put the book into their hands, and desired them to read the passage quoted in the article. Do you see any thing in this passage, says he, to a gentleman, celebrated for his eloquence? * No; I can't say that I see any thing, except something about the orgies of Bacchus. Orgies of Bacchus! blasphemous wretch! write down idolatrous. Is there any thing else? Yes, says a noted civilian†, here are the rites of the eucharist. Write down immediately, he derides the eucharist. What else is there? The great body of christians, replies a third‡. Great body of christians! that is the church of England; write down, the church of England is idolatrous. Home went the managers, in amazement at the sagacity of their learned promoter, and as well pleased at this discovery as the spaniards were with the tradesman's ducatoons.

Promoter's shameful conduct.

Sir, the charge of the promoter deserves to be treated in this ludicrous manner, and I should be content with exposing him thus to your derision, if, by an artifice of his, he did not rather merit your contempt than your ridicule. He has quoted the last sentence of a paragraph, and endeavoured to fix on me the charge of comparing together the orgies of Bacchus with the rites of the eucharist. I deny the charge. No such comparison is drawn, nor could it possibly be drawn. I disdain the imputation of having at any time reviled, either by word or deed, any act or institution of my Saviour. The orgies of Bacchus were contempti-

* Mr. Mansell. † D. J. J. ‡ Mr. Belsham.

ble heathen rites, degrading to human nature: the eucharist had the sanction of our saviour's authority, and was calculated to keep in the minds of the early christians the greatest event that had ever taken place in the history of mankind. I despise the one, and I revere the authority of him who instituted the other. Let the promoter continue his daily sacrifices to Bacchus, but let him not impute to me any approbation of them, much less suspect me of making a comparison which I detest and abhor.

A well known truth. Sir, the passage contains no comparison; it affirms a truth, a well known truth, authenticated by the history of all ages. The authour, alluding to the effect of prejudice in a late event* disgraceful to this country, properly remarks, that the same passions produce on certain minds the same effects. It matters not, whether priests affect to be the disciples of a master, who taught nothing but love and benevolence, or are the votaries of a religion replete with impurity, if their minds are the same, and similar occasions offer, the effects produced will be exactly the same. This truth need not be insisted on here; it is exemplified in the whole conduct of the twenty-seven: but, ready as they are to oppose every truth by which their sacerdotal authority is endangered, let them not suppose that this is the case with every priest. There are very many respectable clergymen who feel no such alarms, and could never be prevailed on to unite with the twenty-seven. Why should I point out to the promoter the man whose chair he at present occupies, the bishop of Llandaff, who by his conduct and writings, proves evidently, that he is not among the class of priests alluded to? He would not sacrifice his religion, or oppose the progress of truth, for any base views whatsoever; and I could, if necessary, enumerate many others of the same sentiments, who by their learning and abilities do credit to this university.

* The riots at Birmingham.

Promoter's division of christians. But, Sir, to leave this point, which has nothing to do with the charge of calling the church of England idolatrous, let us consider the promoter's division of christians, on which he grounds his opinion that the church of England must be meant by the authour of Peace and Union. Christians, says he, are evidently divided by the authour into three classes, the church of England, the dissenters from it, and a certain body of men called unitarians. How contemptibly ridiculous and absurd this division is, must appear evident to any one who gives himself the trouble of reading the paragraph in question. Besides, what must we think of a professor of divinity, who makes a division, by which he excludes the church of England from being a unitarian church? Is the church of England then not an unitarian church? Does he conceive that his church worships a plurality of gods? For my own part among the various sects of christians with which I have been conversant, I know but of one person, who has expressly denied himself to be an unitarian.

Church of England unitarian. Sir, the church of England will give its sanction to no such sentiment. She will claim her right in spite of the promoter to the title of unitarian, and whatever may be the sentiments of different sects on the subject of the divine unity, they will find it difficult to maintain that she is not a unitarian church. Does not her first article expressly assert the unity of the godhead? and if there is any credit to be given to language, we must on her own claims call her an unitarian church. As a member of that church you, Sir, are an unitarian: all who hear me are unitarians, if they agree with the church in asserting the unity of the godhead.

Promoter's division. But what is the number of the unitarians whether of the church of England, or of the body to which the promoter has

has appropriated this title? Add to them all the dissenters and what proportion do they bear to the christians in Europe? The authour of Peace and Union, talking of the great body of christians, speaks of a body of men, which has for fourteen hundred years maintained opinions nearly subversive of true christianity. Can this be said of the church of England which has not been three centuries in existence? The supposition is absurd, and the division of christians, which the promoter would introduce, proves only his total ignorance of church history.

Nothing about idolatry in the book.

Supposing that the church of England was involved in this remark, and was intended by the term, 'the great body of christians,' how is it charged with idolatry? Sir, you will be astonished, all who hear me will be astonished, when they are told that there is not in the whole pamphlet a single passage, in which the terms idolatry or idolatrous occur. How then can the writer honestly be charged with fixing such an epithet on any sect of christians?

Church of England not idolatrous.

But, Sir, whether, by the great body of christians in the passage alluded to, we are to understand the church of England or not, this I will undertake to assert for myself, and to attest in the most publick manner, that the church of England is not idolatrous. I have never called it idolatrous, nor supposed it to be idolatrous. I totally disavow the charge, and in denying it do repeat, of this charge in particular, that it is false, wicked and malicious". I request that the fifth article may be read.

Here the fifth article was read.

* The papists worship several created beings, the socinians and the church of England worship only one created being. Mr. Friend disapproves of the worship of these three parties, and worships only the god and father of Jesus Christ.

5th Article.

‘ 5th Article. We article also and object to you the aforesaid William Frend, That in the thirty-ninth page of the aforesaid book or pamphlet, you have asserted, that ‘ ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity :’ and we article and object as above.’

Promoter omits ecclesiastical dress. In this article I am charged with saying that ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity. On perusing this article and comparing it with the original, the first thing which struck me was the omission of a certain particular, for which I could not at first account: ecclesiastical dress is as much objected to in the pamphlet as ecclesiastical courts and titles. There must be something, I said within myself, extraordinary in this; the promoter has certainly his fears that all is not right about his dress, and that any remarks on this subject must be injurious to his cause. At last I resolved to consult the canons which he has sworn to obey, and I shall now read to you the seventy-fourth, in which decency of apparel is enjoined to ministers.

Canon of the church. ‘ The true, ancient and flourishing churches of Christ being ever desirous that their prelatie and clergie might be had as well in outward reverence as otherwise regarded for the worthinesse of their ministerie, did thinke it fit by a prescript forme of decent and comely apparell to have them knowne to the people, and thereby to receive the honour and estimation due to the especiall messengers and ministers of almighty god. Wee therefore following their grave judgement, and the ancient custome of the church of England, and hoping that in time new fanglenesse or apparell in some factious persons will die of it selfe, doe constitute and appoint, That the archbishop and bishops shall not intermit to use the accustomed apparell of their
degrees.

degrees. Likewise all deanes, masters of colledges, archdeacons and prebendaries in cathedrall and collegiate churches (being priests or deacons) doctors in divinitie, law and phisick, bachellors in divinitie, masters of arts, and bachellors of law, having any ecclesiastical living, shall usually weare gownes with standing collers and sleeves streight at the hands, or wide sleeves, as is used in the universities, with hoods or tippets of filk or farcenet and square caps.*

Vice-chancellor interrupts. Here Mr. Frend was interrupted by the vice-chancellor, who said, surely, Mr. Frend, you do not think that this will be of use to you in your defence. Certainly not, replied Mr. Frend, and went on reading.

‘And that all other ministers admitted or to be admitted into that function, shall also usually weare the like apparell as is aforesaid, except tippets only. Wee doe further in like manner ordaine, that all the said ecclesiasticall persons above-mentioned shall usually weare in their journies, cloakes with sleeves, commonly called priests cloakes, without gards, welts, long buttons or cuts. And no ecclesiasticall person shall weare any coife or wrought night-cap, but only plaine night caps of blacke filke, fatten or velvet.’

Vice-chancellor interrupts again. Here the vice-chancellor interrupted Mr. Frend again. What is all this to the purpose, it cannot do you any good. Certainly not, certainly not, Mr. Vice-chancellor, replied Mr. Frend, and continued reading*.

* Mr. Frend was very well persuaded from his knowledge of the vice-chancellor, that nothing but a thunderstorm could have done him any good: but he read this canon to shew the folly of enforcing an old statute, when one of so much later date was so openly violated with impunity in the university.

‘In all which particulars concerning the apparell here prescribed, our meaning is not to attribute any holiness or speciall worthinesse to the said garments, but for decency, gravitie and order, as is before specified. In private houses and in their studies the sayd persons ecclesiasticall may use any comely and schollerlike apparell. Provided that it bee not cut or prickt, and that in publike they goe not in their doublet and hose without coats or callocks, and also that they weare not any light coloured stockings. Likewise poore beneficed men and curates (not being able to provide themselves long gownes) may goe in short gownes of the fashion aforesayd.’

Promoter's dress. Such, Sir, is the law of the church with respect to dress, how well it is observed by the promoter is too apparent. So far from obeying it, is he not frequently on horseback in contempt of all ecclesiastical discipline, without the priests cloak to cover his nakedness: nay, have we not seen him here exposing himself in defiance of all decency, in his doublet and hose? Are the sub-promoters more attentive to their priestly apparel? At this very moment I discover among them the indecorous phenomenon of white stockings! If, Sir, the promoter can thus despise the laws of the church, it is no wonder that he should be fearful of any mention of ecclesiastical dress: but his conduct deserves the severest reprehension, and he, who could undertake such a cause, must be held up as a fit object for derision and ridicule.

Promoter's charge. I do maintain, Sir, that the charge of the promoter is false. That ever or intended, nor did it ever enter into my mind to assert, that ecclesiastical courts and ecclesiastical ranks and titles are

* Mr. M. tells the new disciplinarian, was as usual in light-colored fustian and white stockings.

all repugnant to the spirit of christianity. There are some ranks, titles and courts repugnant, and others not repugnant to the spirit of christianity. The court of inquisition, for instance, is in my opinion of the former sort, wicked and detestable, and all ecclesiastical courts formed on the same principles, deserve the same epithets. Courts, where the judge is determined to condemn, where he does not sit to investigate, but to harass the accused by every means he can possibly devise. Again there are ranks and titles repugnant to the spirit of christianity: that of pope is of this nature, and every title or rank derived from him, by which he or his adherents claim a power over the people not authorized by the laws of the country, or the precepts of the christian religion.

On the other hand there are ranks, titles and courts, by no means repugnant to the spirit of christianity. Such for example, were the titles of episcopoi, presbiteroi, diaconoi, of the early christians; such their courts for the correction of morals and the infliction, if necessary, of the punishment of excommunication.

But, Sir, the author of Peace and Union of 1794, no where makes the general proposition laid down by the promoter, who has taken an unwarrantable liberty in misquoting and misrepresenting a noble peer. It is in the recollection of the court, that, when this article was read, the promoter asserted, that the words quoted by him were exactly the same as a sentence in the book, excepting only an omission and an insertion. To be false is perfectly justifiable to omit and to be true to state, but such liberties, though they may serve the promoter's purpose, totally destroy the meaning of the original writer. Sir, by the same mode of misquoting, garbling and mutilating sentences the fiercest passages might be quoted as containing the most horrid

horrid blasphemies, and it would be easy to convict the bible of atheism. In one part we read this general proposition, there is no god: it is positively affirmed that there is no god, but shall we rest our faith upon an article? Shall we, like the promoter, indulge in conjectures and forget a very material part of the verse; it is the fool who uses this language: the fool hath said in his heart, there is no god?

Recommends a hal-
ter to himself.

Again we read in another part of our bible, that an eminent leader of a rebellion, having been over-ruled in the cabinet of a rebellious son, went home and hanged himself: and in another place it is said, go thou and do likewise. Will the promoter be satisfied with scriptural authority? Shall I be authorized in giving him this advice: Acathaphiel went home and hanged himself: go thou and do likewise? The promoter will omit, insert, derange, confound, to injure another man; but, when his own principles are brought home to himself, and supported too with scriptural authority, he keeps his place with the utmost tranquillity.

Ascertains the
time.

Here the vice-chancellor interposed. I do not see how this applies to your case.

Recommends a
halter to himself.

It applies, Sir, thus; it proves that the danger and injustice of quoting authorities imperfectly and detaching passages from the context of any writing is such, that by these means any author may be represented as affirming things wholly different from and absolutely contrary to his exact and plain meaning. In the instance now before you, my promoter, by leaving out the word, 'It accords with the views of the law, conveyed by the present and past legislatures, and which, therefore, are not subject to the discretion of the judges,' has been enabled to misrepresent the views of the legislature, and to mislead the judges.

It is not, however, the intention of the speaker to

authour, hence, namely as it is said in the preceding paragraph, from the people being prevented from interfering in ecclesiastical concerns, are derived those courts, ranks, and titles, which are all repugnant to the spirit of christianity. And when did this first take place? when the love of pre-eminence began to bear sway over the minds of the clergy, that is, as it is said in page 36, fourteen hundred years ago. From that time, from the council of Nice, the great body of christians has been under this delusion; the clergy in the greater part of the world think themselves superiour to the people, arrogate to themselves unbounded power, separate themselves from the laity, and bind themselves by vows to obey a foreign prelate. This is universally true of the catholick world, but it is certainly not true in the whole or in part in all protestant countries. I must therefore conclude this article by observing, that the promoter, in his usual way, has misquoted the authour of Peace and Union, and laid to my charge the maintaining of a general proposition concerning courts, ranks and titles, which I utterly disavow: and by acting in this manner he has given me another opportunity of shewing, that his charges against me are false, wicked, and malicious. I beg that the sixth article may be read.

Here the sixth article was read.

‘6th Article. We article and object to you the aforesaid William Friend, That you have profanely reviled and ridiculed the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers, in the following passage contained in the thirty-ninth and fortieth page of the aforesaid book or pamphlet, (to wit) ‘The laity, like brute beasts, are naturally under the usurpation: a man, if a priest or a minister, is not master of his own house; he must receive his food or the blessing of providence at his own table;

table; he cannot pledge his faith to a lovely woman without the interference of the priest; his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home without another incantation.

‘These superstitious prejudices are, without doubt, highly beneficial to the interest of the clerical community; but the morals of neither party are consulted. The laity are apt to imagine that there are some practices in which they may be indulged without any imputation on their christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his clothes:’ and we article as above.’

An accusation without support.

In this article I am accused of having profandy reviled and ridiculed the most sacred offices of the church, and from the peculiar emphasis with which the promoter repeated from the pamphlet the passage on which this charge was founded, it was easy to see that here lay the chief strength of the accusation; and it was naturally to be expected that he should support this assertion with a clearness and force of argument proportioned to the stress which he laid upon it. But, behold, instead of proving or attempting to prove a single syllable in the article, he fairly deserted the point, and left to the court to make out what he felt it impossible to prove. Thus were my judges converted into accusers, and I was left without knowing in what manner or to what I should reply.

There is nothing. I might indeed imitate his silence from the full persuasion, that a reader of the book would find it difficult to discover, on what principle the promoter has grounded his assertion. Surely it became him to see, what were these offices of the church which he called not barely sacred, but most sacred, and which I

am represented as having profanely reviled and ridiculed. For my own part I never heard, that there was an office prescribing the mode of thanking god for the blessings of providence at table; and I never read one in the common book of prayer for sprinkling a man's offspring by sacred hands: and, as the promoter has not chosen to specify any office, we may safely conclude that he labours under some error, and that he has dreamed of an attack on offices which exist only in his own imagination.

Rites of the church of England. But as he has chosen to accuse me of reviling sacred offices, it is incumbent on me to consider two things, the rites themselves, and the persons by whom the rites are performed.

With respect to the rites of the church of England, I feel no difficulty in delivering my sentiments upon them, from which it will evidently appear that I could not wish to revile them. They seem to me in general very decent and solemn, fit to excite among the members of the church devotional sentiments. The services are drawn up in a strain of piety, which would do credit to any church, and however exceptionable some offices may appear to the most eminent among the dignified clergy, they do not deserve to be reviled or to be treated with ridicule.

Clergymen not usurpers. In considering the pre-eminence assumed by priests as a body above the laity, the authour of Peace and Union has properly called it an usurpation: But do the ministers of the english church usurp an authority over the laity? They perform offices as ministers of the state, as servants to the country. They are appointed to their posts like other civil officers, acknowledge themselves obedient in all things to the first magistrate, are not a separate order from

from the people, but perform services only as they are enacted by parliament. Is not this, Sir, the language of the pamphlet? and is it not extraordinary that a writer should be charged with imputing that to the church of England, which he had expressly denied to belong to it?

Rites of the church
of Rome.

The contrary of all this is true in the church of Rome, whose rites seem more like heathenish incantations than the decent services of a christian community. Let any one compare together the ceremonies used in the romish church at a marriage or a burial with the corresponding ones in the church of England, and he will not hesitate to use the language of the authour of Peace and Union with respect to the former, which he would think totally inapplicable to the latter. But the promoter is unfortunately unacquainted with the rites of any church except his own; and, as he saw an allusion was made in the english language to matrimony and burial, he concluded that the writer must necessarily allude to the ceremonies of his own church; not considering that other countries use certain ceremonies on those occasions, and that the description of them, if applied to his own church, would appear very erroneous, if not ridiculous.

Popishness usurp-
ed.

Again, the persons who perform these offices in the romish church do usurp an authority over the people, and the laity, like brute beasts, do sit tamely under this usurpation. They keep themselves apart from the people, and countenance a variety of prejudices, by way of encreasing their spiritual domination.

Popishness
superstitious.

These superstitious prejudices, the writer of 'Peace and Union' does, very properly, as essential to the interests of the clerical community,

munity, and it is right to observe that, though all prejudice is hurtful, some are more so than others, and deserve particularly to be called superstitious. The prejudice for example in favour of a clergy is superstitious, if founded on some mistaken notions of a separate order being spoken of in the new testament as more sacred than the rest: if the priests are conceived to approach nearer to the divinity, to have a peculiar character of sanctity, and to be entitled to a particular kind of reverence, not owing to merit or ability, but to some gifts bestowed on them on their entrance into the order. The respect paid to ministers in a protestant community ought to be of a different nature. In England they are considered as employed in certain duties by the state, and according to their behaviour in the performance of those duties, they will be respected or neglected.

Rites of the church
not reviled, There are no rites, Sir, of the church of England reviled in this passage, nor does the writer seem to have any objection to the performance of them by its ministers. The same line must be drawn in this as in the last article: the whole evidently belongs to the great body of christians which has for fourteen hundred years swerved very widely from the truth of christianity.

Nor protestant minis-
ters, That the authour could not mean to involve in one common censure the ministers of protestant churches, appears from his words in pages twenty-eight and forty-one. In the former he recommends a provision to be made for the clergy, and that the profession should possess such emoluments, as may render it a proper pursuit for men of liberal education. In the latter he declares, that, from the profession of a teacher of christianity, respect ought not to be withheld. This, Sir, would not be said by one who wished to revile the rites or the members of any church, and the
misapprehension

misapprehension of the learned promoter arose solely from his unwearied employment in other pursuits, and his total ignorance of every thing relating to theology and church history.

Having thus, Sir, made some general remarks on the four articles in which I am accused of impugning religion as established by publick authority, I shall now read to you my answer to each charge in particular, as it is drawn up for the future inspection of the court.

Here Mr. Frend read the following paper :

ANSWER to ARTICLE the THIRD.

No defamation in calling the liturgy imperfect ;

THE liturgy of the church of England, being confessedly an uninspired composition, it will appear to many not scandalous, to say, that it must be imperfect ; ‘ nor is it a crime in any one to point out its blemishes in order to its amendment.’ Having been at first distributed into distinct and separate services, it will appear to many no disparagement to say, that it must have suffered considerably with respect to its original arrangement, by the combination of these several services into one. Having moreover been set forth at a time, when the english language was comparatively rude, it will appear to many no profanation to suppose, that both in meaning, and stile, it may correspond but little with our conceptions ; that in fact instances do occur, in which words are used in a sense very different from the popular meaning annexed to them, and that in some prayers, as Mr. Archdeacon Paley expresses himself, ‘ the stile is ill according with that annihilation of human greatness, of which every act that carries the mind to God presents the idea.’ Having, lastly, been composed by persons, whose religious opinions upon some important

important articles, especially those of the quinquarticular controversy, were not exactly the same with those maintained by the body of the english clergy, for above the century last past, many may think it no defamation to say, that in respect to doctrine, it is very far from that standard of purity, which is required in such compositions.

Archbishops have
thought it imperfect.

Such persons would justify themselves by the authority of the brightest luminaries of the english church: by that of archbishop Tillotson, who wished the church fairly rid of the athanasian creed; by that of archbishop Sancroft, who declared, that he was so little satisfied with the burial office, that, for that very reason, he had never taken a cure of souls; by the authority of doctours Bennet and Stebbing, whose opinions on the burials of the dead, and the visitation of the sick, are well known; by the authority, lastly, of Dr. Porteus, the present bishop of London, Dr. Yorke, the present bishop of Ely, archdeacon Paley, and a numerous body of respectable clergymen, who, either by their publications, or their signatures, have declared, that the liturgy is susceptible, and stands in need of improvement.

How defamed by the
authour.

But the charge objected to me is that of defaming the publick liturgy of the established church. I ask the promoter how? the answer I receive from him is, by affirming, that it is very far from the standard of purity in doctrine, which is required in such compositions. But, has the authour any where asserted this, or this only? Is it not said in the pamphlet, that the liturgy of the church of England is very far from that standard of purity in its arrangement, language, or doctrine, and not in its doctrines only? Is it the same thing to assert, that a liturgy, or any other composition considered in three respects, is far from the
standard

standard of purity, as to say, that it is very far from that standard in one only: that can only be true, on the supposition, that a fault in either of the other respects is impossible.

Promoter's reasoning. To prove the contrary, the promoter must argue in the following manner: The liturgy of the church of England you affirm to be very far from the standard of purity in arrangement, language, or doctrine, which is required in such composition. But, with respect to its arrangement and language, there is no deviation from that standard; therefore, you are rightly charged, with affirming that it is very far from that standard in point of doctrine. But, without having recourse to particular instances, can the promoter support the minor proposition, without denying the liturgy to be of human original? Having indulged himself with a sting at his orthodox brethren, by treating in his late prolegomena their opinion of the inspiration of the evangelists, as a vulgar error, does he mean to atone for it, by maintaining the inspiration of the compilers of the liturgy? But further to establish the truth of the distinction, on the ground of which I build my defence, I beg leave to illustrate it by two suppositions.

Proved false in two instances.

Suppose first, that a person, speaking of the vice-chancellor, or any other publick magistrate, should say, that his conduct had been very faulty, in taking notice of some offences, too little or too much of others, could be charged with saying, that the vice-chancellor had been very faulty, in taking too much notice of some offences, till it had been proved, that he had been no ways faulty, in taking no notice, or too little, of others. The promoter has lately published, under the patronage of the university, a transcript of the manuscript copy of the four gospels, and acts of the apostles, with a preface contrary to the advice of a learned man-

bér of this university. Now, should I affirm of this preface, that it is very faulty with respect to the words employed, the sense in which they are used, or their arrangement, could I be charged with affirming, that it was very faulty in the latter instance, unless no faults could be, or had been produced in the two former? It is as unnecessary for me to produce any such instances, as it was to produce any in the former case, in which the vice-chancellor had taken no notice, or too little, of any offences; but, if I could bring myself to cite and examine words and phrases, with as little delicacy, as the promoter has cited and examined witnesses, I should not despair of equal success.

His charge a direct
falschhood.

I have thus shewn, to the full satisfaction of every one here present, that this charge against me is founded on a direct falschhood, and that it derives its whole appearance of truth from an artifice, that would disgrace an accuser in the most ordinary courts of justice. What effect it ought to have upon the character of a doctour in divinity, accusing before the university, I leave to the determination of the court.

ANSWER to ARTICLE the FOURTH.

The term idolatrous not in the
book.

THE fourth charge, exhibited against me, is that of calling the worship of the church of England idolatrous: but this can only be added for the sake of multiplying articles, and of introducing an odious term. For, if the promoter could have proved me guilty of calling the liturgy idolatrous, would he have thought it worth his while, to accuse me of saying, and that too by a plain perversion of my meaning, that it was very far from the standard of purity in doctrine? No! no more than any other promoter, ecclesiastical or civil, would aim at proving one guilty of some
small

small offence, whom he was sure of convicting of the greatest. The proof of this charge is, that the church of England is included, in what is said of the great body of christians in the romish church, as appears by the context, to the promoter at least, who wishes to be thought very quick-sighted in the discovery of heresy and hereticks. Be it so; and is the worship of those churches called idolatrous? No! not expressly; How then can that of the church of England be so called, even though it were included in the same language?

Promoter's absurd
division of christians.

But the promoter, by a very unaccountable misapprehension, unless it may be imputed to a desire of finding fault, supposes me not to speak of four different parties of christians, namely, unitarian believers, dissenters from the established church, and the members of the churches of England and Rome; but of the three former only, and by the great body of christians, are meant the members of the church of England and english dissenters. But who, that is acquainted with the present state of christianity, could think of calling those two parties, the great body of christians; or, on that supposition, what can be meant by the-reference to the church of Rome in the same page; or to the admonition given to churchmen and dissenters, at the conclusion of the paragraph quoted in the charge? 'Let churchmen and dissenters examine seriously, how far they have deviated from the true faith, and as they reject many points, established by the councils of the romish church, let them expunge every thing, which, favouring of its leaven, is to be found in presbyterian synods, or episcopal convocations.'

The promoter
represents itself.

To speak the truth, the charge of idolatry has been too frequently brought by one party of christians against another; all protestants have failed in charging the church of Rome with it; and some

some dissenters have brought the same charge against the church of England. For my own part, though what has been said is sufficient to refute the charge, I must here declare, that I have frequently expressed, and do now express a disapprobation of this language, used towards the church of England. I speak this with greater confidence, as, on a conference, in which my opinion was asked with respect to the use of this term, as applied to the church of England, I expressed, as I do now, my entire disapprobation of it, and declared my name must be withdrawn from the society, of which I was then a member, if that term were permitted to remain in the declaration of the sentiments of the society.

Promoter guilty of falsehood. The promoter, therefore, is guilty of a falsehood, in asserting that the church of England is called idolatrous in the pamphlet in question: and of a wicked calumny, in objecting to me an opinion, which I utterly disavow.

Promoter's incapacity. His assertion, that by the great body of christians were meant the members of the church of England and the dissenters, is another proof of his inability to understand a plain sentence in the english language. By the great body of christians, is evidently meant that body of men, which, for the last fourteen hundred years, has maintained, as is asserted in page thirty-six, opinions nearly subversive of all true religion.

ANSWER to ARTICLE the FIFTH.

The charge a vile calumny. TO assert that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, is both absurd, and contrary to several passages and expressions in the bible.

The

The words *ἐπισκοποι, πρεσβύτεροι, διακονοι*, commonly translated bishops, priests, and deacons, are expressive of ranks and titles in apostolical churches; and St. Paul himself not only authorizes, but advises the sentence of excommunication to be passed upon a delinquent in the church of Corinth. Therefore, since my accuser declares me to have asserted, that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, he declares me to have asserted a thing contrary to that scripture, which I have always professed, and do profess, to make the ground of my belief and conduct; and this his declaration, unless substantiated by irrefragable arguments, can be considered only as a vile and malevolent calumny. Now so far from asserting, that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, I do here profess and declare, that they are both consonant with the spirit of christianity, and were, and may still be highly useful institutions.

Promoter's unjustifiable conduct.

Does the authour of the pamphlet, say, that these courts, ranks and titles, are all repugnant to the spirit of christianity? my accuser has in quoting this passage taken more than one liberty, that is unjustifiable. In the first place, the word *are* is put in, by himself. The passage, as quoted by him without this word, is, ‘ecclesiastical courts, ecclesiastical ranks and titles, all repugnant to the spirit of christianity.’ The accuser justly considering within himself, that such a passage would not suit his purpose, put in the word *are*; and a change is made, which cannot escape the notice of an unprejudiced observer. The insertion of a word is not the only crime, of which this learned doctor is guilty. In the second place, perceiving that the sentence must, from the context, appear absurd, unless the word *have* were removed, he, by boldly striking it out, destroyed the whole meaning of the passage. Thus, by their

these two changes, I am supposed to assert a thing totally contrary to my own principles.

Plain sense of the passage. The fact is, that by taking the passage as it is in the original, the sense is plain, obvious, and corresponding with the passages preceding and succeeding. The clergy, i. e. of the great body of christians above mentioned, are said to affect a superiority, and to prevent the interference of the people in ecclesiastical concerns. Hence, says the authour, hence, namely, from this affectation of superiority, and from the destruction of the just rights of the people, have proceeded, at different times, and in different countries, courts like those of the spanish inquisition, and ranks and titles under the bishop of Rome, all repugnant to the spirit of christianity. The passage, as connected with the context, contains a plain and well-known truth; but my accuser has made it contain an absolute falsehood, by the omission of one word, and the insertion of another.

Defendant's opinion. I do still farther declare and avow it, as my deliberate opinion, that every church in this and all other countries, is justified in instituting any court, rank, or title, which it thinks expedient for the better regulation of its religious concerns: provided that it does not interfere with the rights of christians, and acts according to the rule of the apostle, Let all things be done decently and in order.

I have thus far given myself the trouble of confuting the promoter's charge; but it was unnecessary for me to do so, since the garbled manner in which the passage is produced, both from omission and insertion, have made void the whole of that article, and rendered it incapable of being submitted to any judge either in law or equity.

ANSWER to ARTICLE the SIXTH.

No sacred offices
specified.

IN this article, I am charged with profaning and ridiculing the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers; and it is left to me to find out, what sacred offices of the church of England are meant, and why they are called most sacred. In the first sentence of the passage quoted, it is said, that the laity, like brute beasts, fit tamely under this usurpation. Surely, to a man not blinded with prejudice and passion, this sentence must have been a clue to what follows. Are the laity of England like brute beasts? Do they fit tamely under clerical usurpation? The authour of Peace and Union has expressly asserted the contrary in page twenty-five; and englishmen have certainly got rid of the folly which prevailed in this country three hundred years ago, and will not fit tamely under the vile dominion of any priest.

No most sacred alluded to.

But it may be said, that, in the next passages, the most sacred offices of the church of England are meant. Let any one read over the liturgy attentively, and point out one office there, relating, either to the thanking of God for the blessings of providence at table, or the sprinkling of persons by sacred hands, and I will answer to the charge. There are two offices in it called matrimony and the burial of the dead, but these surely cannot be called the most sacred offices; to which there may seem a reference in the word, he cannot pledge his faith to a lovely woman without the interference of a priest, and at death he is not committed to his long home without another spiritual intercession.

Authour well acquainted with the rites of the romish church.

On reading over the passage above-mentioned, I should conclude at once, that the authour was well acquainted with the ceremonies of the romish church. He mentions the term *sprinkling with sacred hands*, and the burial of a person with another spiritual incantation. By using the word *another*, it is evident, that the authour had in his view an incantation, applicable to some one of the other ceremonies mentioned, and, before he is charged with an improper sense in the use of that term, it is incumbent on the accuser, to make himself well acquainted with the meaning of words, and to beware of appropriating a sense to them which they evidently will not bear.

Meaning of incantation.

By incantation is necessarily meant some charm uttered by singing or chaunting, which was supposed to have influence over the devil or other evil spirits, or to use the words of Lord Chief Justice Coke (3 Inst. p. 44.) as quoted by the Lady Margaret's professor, an inchanter or incantatour is he or she, qui carminibus aut cantilenis dæmonem adjurat; and from reading the liturgies of the church of Rome, and from observing many of its services, I think myself justified in saying, that the word incantation is strictly applicable to the church of Rome, and totally inapplicable to the church of England.

Where used.

Incantation is applicable to the form of words, accompanying the sprinkling used in catholick countries, and this ceremony is performed in the following manner. The priest breathes over the water, and says first: *Exsufflo te, immundissime spiritus, in nomine domini nostri Jesu Christi.* He then uses this exorcism: *Exorcizo te, creatura aquæ, in nomine Dei patris omnipotentis, et in nomine Jesu Christi, filii ejus, et spiritus sancti, si quod phantasma, si qua virtus inimici, si qua incurso*

incurſio diaboli, eradicare et effugare ab hac creatura aquæ, ut fiat fons aquæ ſalientis in vitam eternam. It will not be neceſſary to read the whole office, nor to deſcribe the various incantations uſed in the conſecration of holy water. Incantation is alſo applicable to the burial of the dead in thoſe countries, for with this enchanted water the dead body is repeatedly ſprinkled, as is evident from theſe words, taken from a catholic ſervice, in which every thing wears the aſpect of magick and necromancy, to uſe the language of Dr. Bentley, rather than of a chriſtian rite. Collocabunt corpus ſic indutum, vel ſuper menſam aliquam, vel in terra, loco decenti, ſuper aliquod ſtragulum aut tapete, et ad pedes caputve ſemper candelam accenſam habebunt: parva item aliqua crux ſuper peſtus et inter manus deſuncti ponatur, aut, ubi crux deſit, manus in modum crucis componantur. Sæpe etiam aſpergatur corpus aqua benedicta. In deſcribing the proceſſion to the houſe of the deceaſed, it is ordered to be made prælata cruce, et aſperſorio, cum aqua benedicta in vaſculo. The body of the deceaſed and bedchamber are to be ſprinkled. In the church ſacerdos accipit aſperſorium de manu miniſtri, et aſpergit corpus deſuncti, diacono poſt eum incenſante. The ſprinklings, genuflexions, ſignings with a croſs, incenſe burnings, and various other ceremonies, accompanied the whole time with a particular kind of chant, are well known to any perſon, who has travelled, or made any enquiries into the religious rites of popiſh countries. The ſprinkling of the offſpring, and the ſprinkling of the dead body is performed by a particular incantation, with which when in catholic communion, I have been repeatedly ſprinkled myſelf: it is called aſperſorium aſpergillum.

In the paſſage quoted, there is neither ſatire nor irony: no proſtitution nor ridicule: facts are plainly ſtated, which take place in by far the greater

part of the christian world. The laity in most places fit tamely under the abominable and disgraceful usurpation of the vilest men under the denomination of priests. Let the promoter travel through the greater part of Europe, all Asia, and Africa, where there are christians, and the greater part of America, and he may be a witness to every practice, mentioned in this obnoxious passage: but surely, it is unbecoming his character, unbecoming the office, he bears among us, to shew such a total ignorance of the state of christianity in the world, as to suppose, that those superstitious practices, which are known to belong to others, can be imputed to his own church, and which not only his own church expressly reprobates, but with which the accused person cannot be proved to have ever charged it.

Superstitious prejudices to whom beneficial.

These superstitious prejudices, it is said, are without doubt highly beneficial to the interests of the clerical community. If this were the case in England, the promoter could easily find out the benefit derived, or supposed to be derived by the clergy, from these practices; but as he cannot do this, and on the other hand, the benefits derived from them by the popish clergy, are innumerable, he is convicted again, of giving a meaning to a passage, which it does not bear upon a fair construction.

Whose morals are hurt.

The morals of neither party, it is said, are consulted; certainly they are not in the greater part of the christian world: for, where the priests have the superiority, lust, ambition, passion, inordinate desire, and every other vice, necessarily consequent to the vows they have taken, and under which they are supposed to live, reign uncontrouled, and the people of both sexes, by being kept in ignorance, and made subservient to the views of the priests, grow callous to the impressions of virtue, and are notorious for a degradation of character.

The

Wickliffe's opinion. The people, it is said, think themselves permitted to indulge in these vices. To prove this, it is necessary only to make enquiries from any persons, who have travelled, and they will give sufficient proof, that the people do think themselves authorized to live in the commission of many vices, or at least, from the facility of absolution, make no scruple of living in the habitual indulgence of them. This is no new complaint; Wickliffe used to say above 400 years ago 'that he was not fond of applying, the words, church and churchmen, merely to the clergy. As these often were men of bad lives, he thought such an application, a vile prostitution of those sacred names. Besides, it had a bad influence, he thought, upon the laity: seeming to exclude them from Christ's church, and to give them a dispensation for licentious practices. If they were not of Christ's church, they were not under Christ's laws. He therefore would never have any idea fixed to the word *church*, but that of the whole body of christians.'

Clergymen not more sacred than any other of the army and navy. The gentleman in black is supposed to put on a particular set of features with his cloathes. It would be endless to quote passages from ancient or modern authours, which describe the state of the clergy abroad: the vows, which they are under, necessarily place them in a different situation from other men, and from these vows, they are expected by the people, who know not the nature of our frame, to be so. I have read much on, and been eye-witness to their conduct, but he must be lost to all sense of shame, who either compares, or declares, that I have compared the clergy of England, with those on the continent, with a view of attributing to the former the vices and behavours which belong to the latter. In England they are citizens, on the continent, abroad, they are not so; and consequently different principles, or the philosophy in question, that, could the clergy of France have indulged

submitted to become citizens, they might still have been in possession of wealth and influence. For my own part I consider, and am authorized by the canons of the church and by acts of parliament, in considering the clergy, like the army and navy, as a political body of men, of servants to the state, whose head is the same as the head of the army and navy, the sovereign of these realms. As their conduct with respect to the instruction of the people, and the conducting of the publick worship is regulated by the civil power, the body is political, not spiritual. And, if any one says here, that the clergy are not in this predicament, which is a very different one from that of the romish clergy, and should act upon this opinion, by withdrawing them from the allegiance, due to the king, and impressing them with notions, that they are a body of men independant of the state, I do not scruple to say, that he betrays his ignorance of our laws, and is an enemy to his country.

Promoter's mistake. On the whole then, it does not appear, that any sacred office, much less the most sacred offices of the church of England, are profanely reviled, or ridiculed, or even alluded to. The promoter was not aware, that the passage in question, as I have before hinted, is connected with what goes before in page 36. 'For these last fourteen hundred years, the world has been under the influence of two opinions, nearly subversive of all true religion.' Under the second opinion, namely, the love of pre-eminence, come the observations, that the promoter has made a part of his charge, forgetting, that the church of England is not 200 years old, that at the reformation the pre-eminence of the ecclesiastical state was abolished, that the church of England derives its existence and authority from an act of parliament, and that its existence and authority may in a moment be as easily taken away, as it was given, by an act of parliament.

Defendant's opinion. Though this explanation is sufficient to refute the absurdity of the charge made against me, I think it necessary to give my own opinion of the sacred or most sacred offices of the church of England, as performed by its ministers. They appear to me in general to be drawn up with a true devotional spirit, proper to impress the minds of the members of that church, with sentiments of religion and piety*.

W. F R E N D.

Mr. Frend having finished this summary, desired that the eighth article might be read.

'8th Article. We article and object to you the aforesaid William Frend, That by the laws and statutes of this university, particularly by the forty-fifth statute, intituled, 'De Concionibus:' and by a decree passed in the senate of this university, on the ninth day of June, one thousand six hundred and three, it is ordained and provided, That all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion or by banishment: and we article and object as above.'

Grace book called for. This article having been read, Mr. Frend requested that the grace of 1653 might be read, and on the printed statute book being produced, Mr. Frend objected, and desired that it might be read from the original grace book. The registrar replied that it was not in court; it was in his office. Mr. Frend persisted in desiring it to be produced. The vice-chan-

* This paper was afterwards delivered into our vice-chancellor's hands.

celler on this, said: I suppose, Mr. Friend, it is not very material, you do not wish to give the registry the trouble of going out of court for it. Mr. Friend replied: Sir, I must. I have reasons why I conceive the production of the original very material. The office is not far off, and as I feel myself rather fatigued, this little delay will be some relief to me.

Grace not to be found. Upon this the registry went out of court, and returned in about ten minutes with the original grace-book. Mr. Friend then desired that the grace of 1603 might be read, and after some pause the vice-chancellor replied that it was not to be found. Mr. Friend rose and spoke with some degree of warmth.

No, Sir, it is not to be found. The grace of 1603 is not in those books. It is not in the place which could alone give it a statutable existence. This grace, on which so much has been said, which is to be held out in terrorem to academicks, appears to be a non entity, a phantom. When brought to the test it vanishes into air.

Promoter lost to all sense of decency. Surely, Sir, the promoter must be lost to all sense of decency, who could thus trifle with the court, and charge a man with a variety of crimes against a grace, which as a law existed only in his own imagination. Is not this an instance of the most scandalous effrontery? Not content with the statute de concionibus, which cannot be brought forward in this court, he was resolved to shew his skill and his malignity still farther, by endeavouring to condemn me on a suppositious law. Is it not, Sir, unaccountable, that at the end of the eighteenth century a member of this university, a doctor in divinity, could thus hold forward as a promoter in so nefarious a cause? It is now a hundred and ninety years since the grace is supposed to have passed,

passed, and within that length of time not a single person is to be found on record charged with a breach of it. Am I to be the first person to feel the effects of a grace, which, if it had ever passed, must be well known to have been the produce of troublesome times full of bigotry, and religious infatuation? But it is needless to argue longer on this subject: the grace is not to be found, it has no legal existence, it is not in the records of the university, no proof can be brought of any one suffering under its penalties, it is ——— here the vice-chancellor interrupted Mr. Friend by observing that, though it was not in the grace-book, it was in the vice-chancellor's book: on which Mr. Friend changed his discourse, and addressed him thus):

Grace in the vice-
chancellor's book. I thank you, Mr. Vice-chancellor, for reminding me of a circumstance which I might otherwise have forgotten. The grace is certainly in the vice-chancellor's book, and from thence it was copied into the book of statutes. But, Sir, from its being in the vice-chancellor's book it does not follow that it is a grace of the university. On the contrary there is full and sufficient proof, that, at the time when this book was written, there was no proof of the legal existence of the grace.

But without attesta-
tion. Sir, it is usual to attest that a copy of a grace agrees with the original. Of this you will find in the vice-chancellor's book frequent instances, and the registry of those times naturally made use of the common formula. Under the grace you will find this attestation, concluding, with the words, Ita testor. The registry had been copying the grace, it might be from some printed book, and not having any doubt of its authenticity wrote down the usual words, Ita testor. This it contains, Ita testor. Ita testor! who testor? The registry was no longer a man to be taken

name down without an actual inspection of the original: he searched for this original, and not finding it left the grace in the vice-chancellor's book in the present imperfect condition. There is indeed *Ita testor*, but no name or signature follows. As the grace could not be found in those days—as it is not to be found at present—as there is no record whatever of any trial under it—as it is now a hundred and ninety years since it was passed—I am released entirely from the necessity of giving it any farther consideration. I cannot examine whether the supposed crimes of which I am accused, come under this supposed grace or not; but I must leave the court under this conviction, that no man but the present promoter could have so degraded himself in the eyes of the university, and of all honest men, as to appear thus in a public court, to enforce what at best would have been considered only as an obsolete statute, and is now proved to be of no validity.

Heads of colleges
defended.

Having thus, Sir, freed myself entirely from one part of this article, I may be expected to examine what can be urged against me under the statute *de concionibus*; but I have already made my objections to the application of this statute in the present court. I have protested against it as totally contrary to the forms of our law, and the privileges of the university. The promoter, fearful that his tricks should be found out, resolved to fix me by a statute, which differs materially from the grace: but I stand here, Sir, to be tried by the laws of the university. I am not only to defend myself, but the rights of every member of the senate. I stand here to vindicate the authority of the heads of colleges, which the promoter is endeavouring to undermine. Yes, gentlemen, I will vindicate your authority. I repeat, that no man can be tried in this court under the statute *de concionibus*. It would be an insult to you, to transfer any charge here on this statute. You, gentlemen,

tle men, conjointly with the vice-chancellor, are in the proper place the judges of every offence committed against it. I shall always stand up for your legal authority, and will support it, whilst this promoter, lost to all sense of duty and decorum, insults every one of you. He insults every head of a house by this contemptuous mode of proceeding. Not content with treating the university with the utmost contempt, he aims a blow at the power of its heads. By presuming to interfere with the execution of this statute, he reproaches you with neglect in matters, which are trusted solely to your vigilance: and, in pursuing his own ridiculous purpose, he has no regard for the existence of laws, nor for the characters of those persons, in whom, by our statutes, the execution of them is vested. Gentlemen, if I am ever accused before you on matters, of which you have the statutable cognisance, I know how to submit; but I am an englishman as well as a master of arts of this university, and I do maintain, that every right of englishmen and academicks has been violated in this trial.

It is needless, Mr. Vice-chancellor, to prosecute this subject farther. I shall, in few words, read my answer to this article, to be hereafter submitted to your perusal.

Here Mr. Frend read the following paper:

My dear friends, I now flatter myself with having, effectually demonstrated, that the several charges brought against me, whether I am the author of the pamphlet or not, are entirely without foundation; that I have not impugned religion as established in this kingdom, nor the ecclesiastical ranks and dignities; have not impeached the clergy, till the public worship of God, nor particularly, violated the sacred service of the church. And here I ought to stop, having no concern in what is said or said to be by the promoter, in

in the eighth article, in which he says, that by the laws and statutes of this university, particularly by the forty-fifth statute, intituled, ‘*De concionibus* :’ and by a decree passed in the senate of this university on the ninth day of June, one thousand six hundred and three, it is ordained and provided, that all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion, or by banishment.

Reason for the non-existence of the grace.

But, for the sake of shewing, that, though any or all of these charges should be thought to remain in full force against me, I have not thereby incurred any penalty, the infliction of which is intrusted to this court, I shall offer some things on one of the laws specified therein, namely, the decree passed in the senate of the university, in the year 1603, reserving what I have to say on the statute *de concionibus*, till I am called by the vice-chancellor, and the greater part of the heads of colleges, *errorem et temeritatem meam revocare, et publice confiteri* ; and dismissing all other laws and statutes, not particularly pointed out, with this general observation, *de non apparentibus et non existentibus eadem est ratio*. The supposed decree of 1603, which is printed from a copy of the statutes, formerly kept by the vice-chancellor, is not extant in the only authentick repository of law, the register of the university. Nor is this to be imputed to neglect or accident ; the reason of its not being found there, must be obvious to any intelligent person. It was never ordered to be inserted there, as was, and is usual in the case of standing laws ; the customary clause in these cases, *ut hoc decretum vestrum, vel hinc concessio vestra pro statuto habeatur, et in libris procuratorum inscribatur*, makes no part of it : from hence the inference is obvious, that the decree, objected

by the promoter, was merely a temporary resolution, suited to the present emergency, and not intended to operate as a law in future. The same inference may be deduced from the omission of the words, *deinceps*, or, in *poterum*: it is said, *si quis oppugnaverit*, not *si quis oppugnaverit in poterum*; so that, supposing the form itself ever to have passed the senate, it was certainly never intended, *ut pro statuto in perpetuum habeatur*; and, it is, I believe as certain, that it has never since derived an authority from any publick act of the university. An attempt, therefore, to execute it at this time, must be as unreasonable and unjust, as it would be thought, an hundred and fifty years hence, to enforce, what is called the alien bill, or that concerning traiterous correspondence, when the occasion of passing those laws was become mere matter of history, and the relative situation of England and France entirely changed.

Such a grace could
never have been estab-
lished.

I am warranted in saying this, supposing the decree ever to have had an existence, of which, I believe, the promoter has no farther evidence than that of a private author half a century after the date of it. But would such evidence be allowed in Westminster Hall, in favour of any law, which was not to be found in the rolls of parliament, and of which there were no traces in the decisions of the courts of law? I alledge yet farther, that if the decree were found in the proper place, and containing, all the expressions necessary to show, that, in the intention of those who passed it, it was designed to operate as a law, perpetual, temporary, it must be considered as null and void, for want of power to enact such a resolution. The following are some of the most remarkable circumstances and particulars of Quakerism, which have been observed in the progress of that sect, and which are not only of great use to the public, but also of great service to the cause of truth and justice. The first of these is, that the Quakers are a sect of people who are not only of the same religion, but also of the same principles, and who are all of them of the same mind, and who are all of them of the same heart, and who are all of them of the same spirit, and who are all of them of the same soul, and who are all of them of the same body, and who are all of them of the same flesh, and who are all of them of the same blood, and who are all of them of the same bones, and who are all of them of the same marrow, and who are all of them of the same sinews, and who are all of them of the same nerves, and who are all of them of the same veins, and who are all of them of the same arteries, and who are all of them of the same capillaries, and who are all of them of the same pores, and who are all of them of the same skin, and who are all of them of the same hair, and who are all of them of the same nails, and who are all of them of the same teeth, and who are all of them of the same tongue, and who are all of them of the same throat, and who are all of them of the same windpipe, and who are all of them of the same lungs, and who are all of them of the same stomach, and who are all of them of the same liver, and who are all of them of the same spleen, and who are all of them of the same pancreas, and who are all of them of the same gall-bladder, and who are all of them of the same intestines, and who are all of them of the same rectum, and who are all of them of the same anus, and who are all of them of the same bladder, and who are all of them of the same ureters, and who are all of them of the same kidneys, and who are all of them of the same urethra, and who are all of them of the same penis, and who are all of them of the same vagina, and who are all of them of the same uterus, and who are all of them of the same ovaries, and who are all of them of the same fallopian tubes, and who are all of them of the same cervix, and who are all of them of the same os, and who are all of them of the same hymen, and who are all of them of the same clitoris, and who are all of them of the same labia, and who are all of them of the same perineum, and who are all of them of the same coccyx, and who are all of them of the same sacrum, and who are all of them of the same pelvis, and who are all of them of the same hips, and who are all of them of the same thighs, and who are all of them of the same knees, and who are all of them of the same ankles, and who are all of them of the same feet, and who are all of them of the same toes, and who are all of them of the same nails, and who are all of them of the same skin, and who are all of them of the same hair, and who are all of them of the same pores, and who are all of them of the same capillaries, and who are all of them of the same arteries, and who are all of them of the same veins, and who are all of them of the same nerves, and who are all of them of the same sinews, and who are all of them of the same bones, and who are all of them of the same marrow, and who are all of them of the same blood, and who are all of them of the same flesh, and who are all of them of the same body, and who are all of them of the same soul, and who are all of them of the same spirit, and who are all of them of the same heart, and who are all of them of the same mind, and who are all of them of the same principles, and who are all of them of the same religion, and who are all of them of the same sect, and who are all of them of the same people, and who are all of them of the same nation, and who are all of them of the same country, and who are all of them of the same world, and who are all of them of the same universe, and who are all of them of the same creation, and who are all of them of the same God.

ecclesiæ anglicanæ, and a power of making statutes ad eruditionis amplificationem, et decori atque honesti conservationem? But this is not all; it also in this statute detracts aut officit, as it gives to the vice-chancellor alone, a power of punishing those offences, the punishment of which is, by the statute, given to him and a majority of the heads jointly; and as it takes from every member of the university, the privilege of retracting or revoking his errors, by subjecting him ipso facto, to a suspension of his degrees.

The vice-chancellor agrees with the defendant. In this part of my argument, I have the authority of the vice-chancellor himself, who, on a former day, asserted, that no grace or decree of the university ought to be allowed in this court, which was inconsistent with a publick statute. I take the liberty of adding, whether it makes for or against the power of the vice-chancellor, that of the other heads of houses, or the privilege of a private individual*.

W. FRIEND.

Mr. Friend, having read this paper, addressed the court.

Question is for the promoter. Thus, Sir, I have endeavoured to refute the charges brought against me, but before I deliver the papers into your hands and submit them to a candid investigation, give me leave to address myself to the promoter. Though I have not taken any notice of the statute de concionibus, as he has mentioned the case of Mr. Charke, fellow of Peter-house, who in the year 1572 was under that statute deprived of his fellowship, and banished from the university, and it has been cited as a precedent for inflicting the same punishment upon me, I will take occasion from hence to ask the promoter, before we part, a few questions.

* This paper was afterwards delivered into the hands of the vice-chancellor.

Was Mr. Charke cited into the vice-chancellor's court to answer for his conduct?

Who was the promoter of those days?

Was any near relation or intimate friend cited to appear against him?

Were any private letters or conversation betrayed for that purpose?

Was any attempt made to establish the charges by having recourse to distant publications?

Were the minutes of the evidence taken for the information of the judges put into the hands of the promoter, before they passed into the hands of the judges?

In a word, had the university the mortification of seeing a principal member, in the character of promoter, sacrifice every virtuous feeling to bigotry or resentment, to the hope of preferment or the love of persecution?

The twenty-seven
have no regard for
truth.

While the promoter is ruminating on these questions, I will, Sir, detain the court only a few moments, in considering the nature of these prosecutions. I have been accused of impeaching religion by asserting certain propositions, but, throughout the whole course of the proceeding, the promoter has never given himself the trouble to enquire a moment into their truth or falshood. This he considered as of little importance. It was sufficient for him and the twenty-seven, that an opinion was supposed to be advanced, which, whether true or false, contradicted a notion maintained two hundred years ago, and was therefore a proper object for academical animadversion.

And have formed
an improper opinion
of the university.

How disgraceful, Sir, is such a conduct! These men misconceive entirely the nature and character of this university. We propose by our studies to investigate truth, it is our ambition to lay it open to the world: and should any one of us in the course of his reading see reason to alter his former opinions, or should he explore any latent truth, we will not on that account hold him up to publick censure. We applaud his researches, we approve of his zeal, we rectify our own notions by his discoveries, or if he errs his error teaches us to guard against some fallacy, and paves the way for future enquiries. Had the university been always of the same mind with the twenty-seven, in vain would a Locke have cultivated the powers of his mind: in vain would Newton have set aside the theories of the ancient philosophy. We must have been doomed to one beaten round of dry metaphysics, we must have plodded in the same dull course, and no one would have dared to follow the bent of his genius, lest the discovery of truth should banish him from the seats of literature.

No, Sir, let it not be supposed in the world that our character is degenerated, and that we are of such base and servile minds, as to entertain a wish for the suppression of liberal enquiry. We will continue to exhort each other to cultivate every noble science: some may chuse to explore with Newton the path into new worlds, others are investigating the causes which retained the human mind so long in the mazes of heathen mythology, others, by comparing the systems of the antients with the discoveries of the moderns, may steer between the principles of Leibnitz and our immortal philosopher, and build a theory, which erroneous as it may seem, does not want for advocates among the most intelligent mathematicians*. Why should we stop these men in their career, and if they should carry their attention to sacred

* See the works of Bosovich.

subjects or the art of government, are their endeavours to be derided or impeded? Are religion and politicks the only things so well understood, that no addition or improvement can be made to them?

Liberty of the press asserted. I have been long, Sir, of opinion, that

truth cannot suffer by the fullest discussion, and that every restraint on the liberty of the press, where no damage can be proved to have been done to an individual, is contrary to the interest of society. Truth is on the side either of the majority of a nation, or the minority. If with the former there is nothing to be apprehended from the power of the opponents. In vain will they attack it. The cause of error, weak in itself, will be rendered more feeble by every endeavour to raise its head, and it will be overcome, not by the strength of party, but by the force of argument.

If the truth rests with the minority, it is evidently for the interest of the other side, that every argument should be brought forward. That majority must be corrupt and base which requires the suppression of truth, when it ought, on the contrary, to hold forth every encouragement to free inquiry, by which it must be a gainer; for a tenacious adherence to its own erroneous opinions, in spite of reason or argument, must, by a continual and progressive state of degradation, render it unfit for the most laudable pursuits, and sink it at last in the depths of ignorance and vice.

In a well constituted government, no danger can possibly ensue from the publication of any sentiments religious or political; and that state of religion and government must be bad indeed, which can be overfret by a shilling pamphlet. As to trials of this sort, I look on them as publick benefits; they may be compared to experiments in natural philosophy, and serve to shew what progress the publick mind has made in the investigation,

and how far it is prepared for the reception, of truth. In future times, it will be thought an extraordinary phenomenon, that in the eighteenth century, in a place dedicated to the pursuit of literature, a man should have been thus summoned, thus tried, and thus persecuted for the publication of opinions, which no one of his accusers attempted to refute.

Free inquiry, to whom injurious. To sum up the whole, Sir, in few words; free inquiry cannot be injurious, except to wicked and depraved minds. Society may be meliorated, but can never suffer by it: and if it should be objected, that thus a door will be opened to the propagation of erroneous principles, let us still recollect, that the errors of genius are momentary and pardonable; but how shall we hereafter dispell that horrid gloom of intellectual darkness, which the promoter and his cabal are endeavouring to spread over this university!

PROMOTER'S REPLY.

Dr. Kipling now rose and observed, that when he considered the number of hours which had already been wasted on this trial, the precarious state of the vice-chancellor's health, and the various duties annexed to his office, he felt the necessity of confining himself, in his reply, entirely to the merits of the cause. He insisted that, notwithstanding every thing which Mr. Friend had said, to repel the charge of defaming the ministers and officers of the church of England, it must be obvious to every one, that the church of England must be the chief object of his attack. For to whom was the pamphlet addressed, but to the associated bodies of republicans and anti-republicans in England, and where must those abuses exist which they are called upon to remedy? certainly not in the church of Rome, to which their exertions could not extend, but in the church of England, where only they could be supposed to have any effect. The rest of

Mr.

Mr. Frend's defence was reducible, he said, to the following points :

The charge of malice imputed to him and the other prosecutors.

The impropriety of enforcing an obsolete statute.

The credibility of witnesses which had been produced in court.

As to the malicious and persecuting spirit with which he had been charged, Mr. Frend could not have forgot the opportunity which had been given him of making concessions, and averting the prosecution, if he had thought proper. Of this the promoter said he was ready to give an account, if called upon. Mr. Frend here desired him to do it. Dr. Kipling proceeded, and said, that not many days after the fourth of March, when the first resolutions relating to the prosecution had been agreed on at the vice-chancellor's, Mr. Marsh called upon him, and after expressing his concern for Mr. Frend, as a relation and friend, wished to know if there was no way by which the prosecutors might be satisfied, without bringing matters to such extremities as seemed to threaten him. He told Mr. Marsh, that in his private opinion, if Mr. Frend should recant, and make a proper concession, he would not be brought before the vice-chancellor. For his part, he assured Mr. Marsh, that he would then take no share in the prosecution, and he believed no other person would. Mr. Marsh went, by his consent, to Mr. Frend, who asked him, if he was authorized to make any proposition, and on his answering in the negative, Mr. Frend said, as you are not authorized, I can say nothing.

The promoter then went to the next point, and said, that as to the removal of the law which might seem to have

become obsolete, it did not follow, that a law, which had been long disused, was therefore never to be enforced. There might be times when it would be more prudent to connive at their violation, than to prosecute the offence. On the other hand, the times might be such as to demand every exertion, and to call on all the authority which the laws had given. The very times in which the pamphlet had been published were full of alarm, the press teemed with publications calculated to spread disaffection and discontent over the whole kingdom: the attorney general had found it necessary to proceed against the offenders with more than common rigour; and if in this place we had suffered such a daring attack upon the establishment, to go unnoticed, we should have proved ourselves ungrateful to the best of sovereigns*.

As to what Mr. Friend had objected to the depositions of Mr. Plampin, Mr. Kilvington, and Mr. Lloyd, it was not to be supposed, for a moment, that three persons of liberal education, would knowingly perjure themselves in that or any other court. Their junction with others in the prosecution did not give them such an interest in the cause as to make them inadmissible. Every member of society is in some degree interested in the prosecution of a publick offence: crimes of the most enormous nature might go unpunished, if all persons interested were precluded from giving evidence, and in cases of murder, no witness at all could be admitted, all being concerned, and parties in bringing the guilt to light†.

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* Why did not the promoter and his cabal, attack Mr. Friend for several other publications written expressly against the tenets of the establishment? The great dispute on the unity of god, in which he took so active a part, both by his writings, and discourses from the university pulpit, did not, it seems, affect them: for what care they about the unity of god, or any other religious controversy, unless the times are such, that by opposing every effort to advance the truth, they may accelerate their own perdition?

† It appears from the protest, that Mr. Kilvington's evidence only was objected to on account of venality; that of the other two

The present prosecution was of a publick nature : the defendant was not cited for any personal offence to him or any other of the prosecutors. He had offended the publick at large by his indecent reflections on the publick institutions, he had called the solemnity of interment a spiritual incantation, he had charged the worship of the church with idolatry, and coupled the holy communion with a bacchanalian revel. The publick therefore was injured and insulted, every man was interested in punishing the crime ; and the three gentlemen who had borne testimony in the cause, ought no more to be rejected on account of partiality, than any other evidence who felt it a duty to stand forth and endeavour, as much as in him lay, to repress an evil of such a dangerous nature. Under this impression, the promoter said, that he had acted to the best of his abilities, and concluded with a compliment to the vice-chancellor and the heads, for their patient attention during the whole of this long trial.

Mr. Frend rose and observed, that as the promoter had been permitted to digress from the proper business of his reply to the relation of a fact which had not been before the court, he hoped that he might be allowed to make an observation also on the same subject. The vice-chancellor answered : To be sure. Had I known what Dr. Kipling had been going to say, I should have stopped him.

Mr. Frend then related the whole of the transaction with Mr. Marsh, appealing to a letter which Dr. Kipling had received from Mr. Marsh, and which he declared should soon be in possession of the publick ; concluding the whole of this point with observing, that it was evi-

on different accounts : and the reader will keep in mind, that the objection was founded on the civil law, the law of the court, to which the promoter, and his partner, the vice-chancellor, seemed to have paid no attention.

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dent nothing conciliatory was ever intended: for if it had been, when they found it rejected by Mr. Frend merely as it should seem for want of authority in the proposer, this authority would have been given to Mr. Marsh, and the negotiation would have been resumed. But no such thing was done*.

As

* The copy of the letter which Mr. Marsh wrote to Dr. Kipling, on Monday the 6th of May, is in Mr. Frend's possession, but as it is of considerable length, a part of it only, containing those circumstances, is here inserted, which relate to the point in question.

‘ I perfectly well remembered that I had called upon you about two months before, to inquire if no method could be devised of averting the evil which threatened Mr. Frend; that a conversation took place, the result of which was, that I should go to Mr. Frend, and propose to him to make a concession, in the hope of having the prosecution dropped; that my instructions were, to say, I had reason to believe that a concession would produce the desired effect, but that I was not authorized to assent it; that I went in consequence to Mr. Frend, that I made the proposal agreeably to my instructions; that he refused to return an answer, on the ground of my not being authorized to make the proposal, and that I again called at your house, to report what I had done.

‘ In answer to my request that I might not be called into court, you said, if it was not necessary, you should not do it; but if Mr. Frend refused to acknowledge himself the author, and proofs of the authorship were wanting, you should then be under a necessity of calling me. I replied, that as far as I understood the conversation which had passed in the evening, of my citation, the design of my evidence was merely to shew that a reconciliation had been proposed, and that I knew of nothing in that transaction, which would prove Mr. Frend to be the author of the work which was published in his name. You then gave me to understand, that in procuring my evidence, you had very different views from what I had imagined, as appeared from your making the following answer: Don't you recollect, that, when you made the report to me of the conversation, which had taken place between yourself and Mr. Frend, you said, among other things, that Mr. Frend asked the following words: The members of the church of England have

As to the promoter's maintaining that the ecclesiastical abuses complained of in the pamphlet, must be supposed to belong to the church of England, because the pamphlet is addressed to the associated bodies in this kingdom, he will please to remember, that all the paragraph from which he quoted, is expressly said, in the bottom of page 41. to be a digression with which the parties addressed have nothing to do. The words are : ' The contending parties, whom we are addressing, will, however, consider this as a digression, and leave to others the care of directing the spiritual concerns and meliorating the religious opinions of mankind.'

less reason to be offended than the dissenters, because, in the parallel which I have drawn between them, the advantage is much in favour of the latter ?

' To my reply that I did not recollect having reported from Mr. Friend, the words which you repeated, you discovered, Sir, very visible marks not only of disappointment, but of anger, and in a very haughty and imperious tone, a tone which our respective situations, I think, will not justify, you threatened me with all the danger of prevarication ; you told me that I should lose my character, if I pretended to conceal what I knew to be fact ; that I was not the only witness, who had been tampered with, in order to conceal evidence which should be brought to light, and then lifting up your arm with a menace, which (excuse me, Sir, the expression) at present appears to me ridiculous, you solemnly and violently declared, that you would not suffer such proceeding.'

Mr. Marsh, on the subject of tampering, remarks with proper warmth : ' I assure you, Sir, that under the name of tampering be applied to the attempt, which you yourself have made to recall to my mind expressions, of which I have not the faintest recollection, uttered in the manner which you declare, I know of no attempt, direct or indirect, to which the term can be applied. With the assurance that others will not be tampered with, I have no immediate concern : I can only say, that I know of nothing of the kind, and that I believe Mr. Friend is a man of too much honour to be so tampered with, to do so to his associates.'

With

With respect to the witnesses, it was unnecessary to add any thing to what had been stated in his objections to them, the grounds of which had not been removed by the promoter, as their inadmissibility depended on very different circumstances—on laws with which it was evident he had not given himself the trouble to make himself acquainted.

Mr. Frend then gave into the hands of the vice-chancellor the papers, containing his answer to several charges which he had read in the course of his defence, with the request that they might not be permitted to pass into the hands of the promoter, or any other persons, except the heads of colleges. The protest against the validity of the minutes of the evidence he then signed and delivered to the registry.

ACTA CURIE.

At a court holden on Tuesday, May 28th, between the hours of eleven and one.

THE vice-chancellor informed Mr. William Frend, that having fully and maturely weighed and considered the charges brought against him by Dr. Kipling, the evidence, and his defence, he was of opinion, that he the said William Frend was proved to be the author and publisher of a pamphlet, intitled *Peace and Union*, recommended to the associated bodies of republicans and anti-republicans; and that by writing the aforesaid pamphlet, and publishing it within the university of Cambridge, he the said William Frend, had offended against the latter part of the statute de concubus,

cionibus, beginning with the words, *Prohibemus ne quisquam, &c. &c.*

Then the vice-chancellor, with the assent of the major part of the heads of colleges, as is required by the statute, directed Mr. Frend to retract, and publicly confess his error and temerity in the following manner.

‘ I William Frend, master of arts, and fellow of Jesus college, in the university of Cambridge, do acknowledge that, by writing a pamphlet, entitled *Peace and Union*, recommended to the associated bodies of republicans and anti-republicans, and by publishing the same within the university of Cambridge, I have offended against the latter part of the statute de concionibus, as expressed in the following words :

‘ *Prohibemus ne quisquam in concione aliqua, in loco communi tractando, in lectionibus publicis, seu aliter publice infra universitatem nostram quicquam doceat, tractet, vel defendat contra religionem seu ejusdem aliquam partem in regno nostro publica autoritate receptam et stabilitam, aut contra aliquem statum auctoritatem dignitatem seu gradum vel ecclesiasticum vel civilem hujus nostri regni vel Angliæ vel Hiberniæ.*

‘ I do therefore, by the direction of the vice-chancellor, with the assent of the major part of the heads of colleges, retract, and publicly confess my error and temerity, as the said statute requires.’

And the court was adjourned to Thursday next, the sixth instant, at nine o’clock; and Mr. Frend was warned by the vice-chancellor then to appear, and to read the term above-written.

“ The committee began the business of this day by reading a part of the written defence which Mr. Frend had

had delivered to the vice-chancellor on the preceding court day, and addressing himself to Mr. Frend, asked him, whether he wished to be heard upon the statute de concionibus. Mr. Frend replied : certainly not. Upon this, the vice-chancellor declared Mr. Frend guilty of a breach of the statute de concionibus, as is stated in the acta curiæ, prefacing his order to recant with the following resolutions, which he read from a written paper.”

Cambridge, Queen's college, May 27, 1793.

AT a meeting of the vice-chancellor, and the under-written heads of colleges : It was unanimously agreed, that William Frend, master of arts, and fellow of Jesus college, is proved to be the author and publisher of the pamphlet, entitled Peace and Union, recommended to the associated bodies of republicans and anti-republicans.

It was also unanimously agreed by the said vice-chancellor and heads of colleges, that by writing the aforesaid pamphlet, and publishing it within the university of Cambridge, the said William Frend has offended against the latter part of the statute de concionibus, beginning with the words, Prohibemus ne quisquam, etc.

It is also unanimously agreed by the said vice-chancellor and heads of colleges, that the said William Frend be directed by the vice-chancellor to retract, and publicly confess his error and temerity in the following manner *.

* Why were not these resolutions inserted with the recantation in the acta curiæ ? Was the vice-chancellor conscious that these resolutions could only be made in a private meeting, and that the making of them would prove that he was acting in two different courts ?

Here

“ Here follows the recantation as above, and then the signatures.”

Isaac Milner, V. C.

John Smith,

R. Farmer,

W. Colman,

L. Yates,

J. Barker,

J. Turner,

Francis Barnes,

W. Craven,

T. Pottlethwaite.

“ A copy of the recantation, without any signatures, or resolutions, was delivered to Mr. Frend, who insisted on seeing the paper signed by the heads, which was delivered to him. He then began to read and observe upon it—the second article of the charge has never been proved against me—by writing, I have offended against the statute de concionibus—am required to retract my error and temerity—What does that mean? The vice-chancellor interrupted Mr. Frend, who said, I am reading only that I may understand it; and then proceeded in his remarks. The statute requires me to retract my error—that error must be first pointed out. The vice-chancellor here again interrupted; and Mr. Frend was again proceeding in his remarks, when the vice-chancellor called out with much vehemence—order! order! the court must not be trilled with any longer!

“ F. Sir, I must consider whether I can subscribe this or not.

“ V. C. Mr. Frend, I will answer at once all you are going to say. If you wish for time to consider, I will adjourn the court: and I do accordingly adjourn this court till nine o'clock on Thursday morning: and I warn you to appear, and to retract in the manner in which you have been directed. If you object to appear, or refuse to retract, you must take the consequences.

“ Thus the court was adjourned ; and Mr. Frend applied to the registry for a copy of the resolutions agreed to by the vice-chancellor and heads of houses ; and on his saying, that he had them not, Mr. Frend made the same application to the vice-chancellor, who promised that he should have them. In the afternoon a copy of the recantation was brought to Mr. Frend, without the resolutions ; on which he wrote a note to the registry, insisting on the vice-chancellor’s promise, which was sent by him to the vice-chancellor, and in a few hours a copy of the resolutions found their way to Mr. Frend, from Queen’s lodge.”

ACTA CURIÆ.

At a court holden, &c. on the 30th day of May, 1793, between the hours of nine and eleven.

MR. Frend appeared, and the minutes of the last court were read. Mr. Frend refused to read the form which was presented to him to read by the last court.

Mr. Frend delivered into court a paper, in bar of sentence, beginning, “ Whereas I William Frend am accused,” and ending with the words “ spiritus sancti. Amen.”

The vice-chancellor, with the assent of the major part of the heads of colleges, decreed sentence of banishment against Mr. Frend in the following form ;

“ I Hic

I Isaac Milner, D.D. vice-chancellor of the university of Cambridge, do decree, declare, and pronounce, that William Frend, master of arts, and fellow of Jesus college, having offended against the statute de concionibus, by writing a pamphlet, Peace and Union, recommended to the associated bodies of republicans and anti-republicans; and by publishing the same within the university of Cambridge, and having refused to retract, and confess his error and temerity, in the manner prescribed to him by me the vice-chancellor, with the assent of the major part of the heads of colleges, has incurred the penalty of the statute, and that he is therefore banished from this university. (Signed)

Isaac Milner, V. C.

John Smith,

R. Farmer,

W. Colman,

L. Yates,

J. Baker,

J. Turner,

Francis Barnes,

W. Craven,

T. Poillethwaite.

And the court was then dissolved.

“The court having been proclaimed, and the proceedings of the last court day read, the vice-chancellor addressed Mr. Frend: You have considered, Mr. Frend, this matter, and have now had time to answer, whether you will or will not retract as directed by the court.

Mr. Frend, rising with a paper in his hand, began to read:

“Mr. Vice-chancellor, the form, directed to be subscribed by me, consists of two parts, of an——

“V. C. Order! Mr. Frend, I have already heard you five hours in your defence, and would willingly have heard you for five hours more, if you had chosen to stick upon the statute de concionibus.

“P. Sir,

“ F. Sir, it is not upon the statute de concionibus, that I am going to speak now, but——

“ V. C. You must not read or speak any thing now, but say, whether you will or will not sign that recantation.

“ Mr. Frend attempting again to read from the paper, the vice-chancellor again called out with vehemence—
Order ! Sir, Order ! Order !

“ F. Aye, Order ! Mr. Vice-chancellor. I am for order ; if you are a court of inquisitours, you may silence me ; but here I must be heard.

“ V. C. You cannot ; it is too late. If you do not read this form, we shall consider it as a refusal to retract, and proceed accordingly.

“ F. This paper contains important matter. I ask the opinion of the court upon it. If you will not allow me to read it, will you take it, Sir, and consider it yourself ?

“ V. C. I will.

“ Mr. Frend then delivered the following paper to the vice-chancellor :

“ Mr. Vice-chancellor,

“ The form directed to be subscribed by me, consists of two parts—of an acknowledgement that I have offended against the statute de concionibus, and of a retraction, or publick confession of my error and temerity. The former appears to me unreasonable, the latter is unintelligible. I chuse to begin with the latter :—to retract, or publicly confess error or temerity, must mean, to retract or publicly confess some erroneous and rash position, or assertion, that has been advanced. But, where no position or assertion is stated to have been advanced, as in this case, it can have no meaning at all. It is to
retract,

retract, or publicly confess nothing, or to make no retraction or confession.

“The unreasonableness of requiring me to acknowledge, that I have offended against the statute de concionibus, consists in this, that no charge whatever, of having offended against the statute, has been brought during the whole course of the trial. I have indeed been charged with impugning religion, as by law established, and with impugning all ecclesiastical ranks and dignities. The language of these charges is plainly borrowed from the decree, supposed to have been passed in the year 1603: *si quis oppugnaverit doctrinam vel disciplinam ecclesie anglicane*, are the words of that decree. The language of the statute, which must be deemed essential to any charge designed to be built upon it, is very different; it says, *Prohibemus ne quisquam publice infra universitatem nostram quidquam doceat tractet vel defendat contra religionem in regno nostro receptam et stabilitam, aut contra aliquem statum, auctoritatem, dignitatem, vel gradum vel ecclesiasticum vel civilem*. Now, with which of these acts have I been charged? and they are the only ones, which the statute makes criminal.

“In an act of parliament passed soon after the revolution, it is enacted, that if any person, having been educated in, or at any time having made publick profession of the christian religion, within this realm, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons in the holy scriptures to be god, he shall incur certain penalties. But, whether a charge of having impugned the doctrine of the Trinity, though perhaps an offence against that statute, is or is not deemed an offence against this statute, is very uncertain, and with any charge of blasphemy, or of any other kind of libel, teaching, or speaking, or writing, that has concerned me, I have, then, been charged with an offence against the statute, on having refused to retract, or to confess anything, or to retract

be considered as a charge of having offended against the particular statute de concionibus.

“ The vice-chancellor having received the paper, and consulted some time with the commissary and the heads, came forward, and said, We all adhere to the form prescribed, and think that there is nothing contained in the objection. You have been convicted of offending against the statute: the statute has left to the court to direct the form of recantation; this we have given you; and you must now only answer, whether you will or will not submit.

“ F. I expected that the errors which I am to recant would be pointed out.

“ V. C. The error is, that you have offended the statute.

“ F. I declare, upon the honour of a gentleman, and the credit of a scholar, that neither my friends, nor I, can understand the form.

“ V. C. I will hear no more.

“ F. Am I then to subscribe this as my recantation?

“ V. C. You are.

“ F. Then I would sooner cut off this hand than sign the paper.

“ Upon this the vice-chancellor and the heads employed themselves in signing the sentence, which had been prepared and brought into court; and Mr. Frend, after a minute's pause, addressed the vice-chancellor:

“ May I deliver this paper into the court, in bar of sentence?

“ V. C. You cannot.

“ F. Sir,

“ F. Sir, I appeal to the commissary, whether in any court of justice a plea may not be offered in bar of sentence?

“ Com. Sentence is not yet pronounced.

“ F. It is to prevent sentence that I offer this plea.

“ Having said this, Mr. Frend laid his plea on the registrar’s table.

“ Whereas I William Frend am accused of having offended against a statute of the university, by publishing a pamphlet, entitled Peace and Union, &c. and at the close of the last term, the following form of general absolution was pronounced by the vice-chancellor’s deputy in a publick congregation : I do hereby plead that absolution in bar of any further proceedings against me, on account of the said publication.

“ Absolutio in fine termini.

“Auctoritate nobis commissa, nos absolvimus vos ab omni levi negligentia, forisfactione, seu transgressionem statutorum privilegiorum et consuetudinum, et deo et sacramentis ecclesie vos restituimus in nomine dei patris et filii et spiritus sancti. Amen.

“ The heads having now resumed their seats, Mr. Frend repeated the request that his plea might be read.

“ Vice-chancellor. It cannot.

“ F. It must.

“ Com. No paper has been yet received into the court.

“ F. My request is that it may be received.

“ V. C. If you had any right, I would receive it.

“ F. I have a right, and, as a member of this university,

sity, I insist upon it. I do demand that it may be received and read.

“ Upon this the vice-chancellor took the paper, and having slightly perused it, with the heads, threw it back again upon the table, and read from a written paper an address to the audience, the substance of which is as follows.”

VICE-CHANCELLER'S SPEECH.

On his election into the office of vice-chancellor, Dr. Milner said, that the ill state of his health made him acquiesce in the determination of the university with much diffidence and anxiety. He foresaw that the remains of his health might be injured by the office, and his mind was agitated with this painful reflection: that the dignity of the office of vice-chancellor suffers, and the discipline and general interests of the university are essentially injured through his incapacity.

He was in hopes, however, that the peace of the university would not be disturbed: little imagining that he should be called upon to animadvert, not upon the rash and intemperate fallies of an inexperienced youth, but upon the premeditated and offensive conduct of a gentleman, with whom, he said, he had been long acquainted, and for whose talents and attainments he entertained the most sincere respect.

As this event however had taken place, nothing remained for the vice-chancellor but to investigate the nature of the offence, and the punishment assigned by the laws of the university, and to explain them both in the most conspicuous manner he was able.

On such an occasion, he observed, the situation of the judge of this court is not to be envied. The times are unfavourable

unfavourable to the enforcement of rigid discipline. Produce existing laws and you are told, that such law ought not to have been made; that they are a disgrace to the country; that they are obsolete, and, perhaps, that you dare not enforce them. Others admit, with more temper and plausibility, that offences like the present are highly blameable in themselves, and that, if punishments were confined to such gross and indecent examples, there would be no room for complaint; but, when you have once begun to punish for the propagation of opinions, unfair advantages will be taken; not a syllable must then be uttered against what is established: there is an end of the exercise of our faculties in a dispassionate investigation of truth. Then the parties cry out—persecution!—tyranny over the conscience!—no freedom of discussion!—And thus the clamours of the ignorant or disaffected, are to be an answer to every sober argument, that can be advanced in favour of the most cherished and venerable institutions to be found in the history of mankind.

As these clamours may have a tendency to draw away the soundest mind from the point in question, the safest rule is, he observed, to pay not the least regard either to those who cry out tyranny and persecution, or to those who cry out heresy and sedition.

With these impressions he entered on this unpleasant business, conceiving that, as a bold and indecent attack had been made upon the religious institutions of the country, and the statutes of the university openly violated, the reverence and influence of the university might soon be endangered.

It is true, he did not mean to let the fellow public man be so much better treated with neglect and contempt. But the case of Mr. Frend was of a peculiar nature. He was

person of considerable standing in the university, and we are all of us ready to bear testimony to his talents and attainments. He has been in the most important situation of a publick tutor of a college. He resides a good deal among us, and by his zeal and perseverance, is well qualified to make impressions on the unsuspecting minds of youth. He is known to have objections to the established doctrines of the church; and if his defamation of the solemn institutions of our religion, and the publick functions of the clergy, went unpunished, the under-graduates would soon insult the doctrines and ceremonies of the church, believe them to be mere political contrivances, and conclude, that we, as well as others, being convinced that they are indefensible by reason, are only induced to adhere to them from pusillanimity, or self-interest.

Whilst I was hesitating, (he continued,) whether, as vice-chancellor, I was not called upon *ex officio* to animadvert, in a summary way, on the authour of this pamphlet, I was released from my doubts, by the applications of thirty-four members of the senate, most of them of distinguished reputation, who, without the least appearance of animosity or resentment, professing also to be solely influenced by a desire of maintaining the honour of the university, requested the vice-chancellor to take cognizance of this offence.

Let us hear, therefore, no more of tyranny and persecution on the one hand, nor of heresy and sedition on the other, but seriously and solemnly approach the cause itself.

A grievous charge is brought against Mr. Friend. I find myself bound to enforce the statutes of the university. I do not mean to insinuate, in the slightest degree, that the 45th statute is an unwholesome or impolitical law:

law : I find it in existence, and I am bound to execute it*. Dr. Kipling has pointed out particular statutes, which he affirms to have been violated, and therefore, in case of conviction, the court has no option. The conviction depends on two circumstances. Is Mr. Frend the authour and publisher of the pamphlet? On this head we have not the least embarrassment; and Dr. Kipling has, we think, produced a great deal of superfluous evidence†. Does the pamphlet contain matter by which the 45th statute is violated? We are all convinced that it does; and the eloquence of Mr. Frend has not convinced us that the most offensive passages do not apply to the church of England, as well as the church of Rome‡.

But supposing the court to have a discretionary power, what could induce them to exercise it? Were not the times, when the pamphlet appeared, most critical? Did the authour inculcate the necessity of peace and good order§? When the national convention of France had filled up the measure of their crimes, by murdering the king, and destroying all lawful government, and their deliberations breathed nothing but atheism and anarchy,

* Why does not the vice-chancellor observe and censure to be observed all the other statutes which are in existence, and which, upon his mode of reasoning, he is equally bound to execute?

† Dr. Milner may have been convinced in his own mind, because Mr. Field went to him for an imprimatur, and showed him the manuscript of the work; but as a judge, he ought to determine only by the evidence in court: and he would Dr. Forth have stated, without hearing, the evidence on this point?

‡ Surely Dr. Milner ought to have satisfied the audience on this subject, by giving some reason for it, or at least,

§ The authour says that of the pamphlet the necessity of it is manifest.

did he inculcate a respect for the king and parliament of this country, and for the reformed religion, and the functions of the clergy as established by law*? In a word, was it not his plain object to teach the degraded laity, that they were sitting like brute beasts under an usurped authority†. In the title page, there stands in great letters, ‘Peace and Union,’ but my assessours, the heads of colleges, concurred with me in opinion, that the offensive passages belonged to the church of England, as well as that of Rome.

Again, the authour, the vice-chancellor observed, had not shewn the slightest vestige of contrition, and had mistaken, in several ways, the proper mode of defence. He has not treated the cause with a sufficient degree of seriousness, but expected to make an impression on his judges by legal quibbles, strokes of wit, and allusions to novels. He might have avowed the authourship, and have said, this I maintain to be true, that may possibly be defended, but here I wish I had stopped. He might have boldly confessed and defended his principles, and in a manly way have submitted to the infliction of penalties, which, according to his judgment, were arbitrary and unreasonable‡.

The

* If Milner were to be seen often in a pulpit, we might ask him, whether in every sermon he followed this plan, and why was the authour to inculcate a respect for the established religion, when he is well known to disapprove of many points in it? But to hear Milner talk of religion, and the functions of the clergy, was such a burlesque, or, to use his common phrase, ‘keeping up of the pump,’ as was never before exhibited.

† So far from it, he told the people of England, that the alliance between church and state is a fiction, which could not be realized in this country, without subjecting the adherents of it to the penalties of treason, and that all our ecclesiastical laws depend on the authority of parliament.

‡ *Quia rectius hoc, quam a te, si te leve verum*

Peculor domi laqueum, Nomentane, sine nepotem!

Cam. Nil quicquam tunc quicquam est, Intus et edit.

M. J. Flood

The court has been at a loss to comprehend in what way the continued application of satirical remark on the character of Dr. Kipling, and on the rest of the gentlemen who disapproved of this publication, could be useful. Can he now say as the great roman did of old, *Si nulla alia in re, modestia certe et temperando linguæ adolefcens senem vicero!* It was more than once insinuated, that the promoter of this cause could neither read nor speak a word of pure latin *. But supposing that the bishop of Llandaff could permit the most important professorship of the university to be so scandalously degraded and neglected, as this imputation on Dr. Kipling implies †, or that calumny could fix itself on the characters

Mr. Friend does not now shew the slightest vestige of contrition. He is well convinced that the vice-chancellor and his cabal wished the cause to be treated in a more serious manner; but it is to be hoped that all persecutors may, in future, be treated in the same manner. At the latter end of the eighteenth century, it would be ridiculous in the extreme, to give any kind of importance to a promoter, sub-promoters, and familiars; they deserve only to be treated with contempt and ridicule, and to be held up to the world as so for nothing but to cringe barely for preferment.

* For read he could nor evidence nor will,
 Ne tell a written word, ne write a letter,
 Ne make one tittle worse, ne make one better:
 Of such dees learning little had he need,
 Ne yet of latin, ne of greek, that breed
 Doubt amongst divines, and difference of texts
 From whence arise diversity of sects,
 And hateful hereticall of God abhorr'd;
 But to be good he did follow the plain word,
 Nor chidde with them contrivellous divs;
 And all his life his service well to turn,
 And to be thankfull on holy day;
 Where that was done he might attend his plays.

Measure for Measure's character, 326.

† Mr. Friend is a little Mr. Friend, who entertained the celebrated Dr. Kipling at his house, and, therefore, he is the subject of this attack, the subject of calumny and of calumners.

ters of Dr. Glynn and Professor Mainwaring, of twelve tutors and lecturers, of thirty-four members of the senate, how would all this exculpate Mr. Frend? But not content with this, he has maintained that their evidence on oath ought to be rejected. Let us try the truth of this assertion by a possible supposition. Suppose the whole university in a body had made this application, would any man say, that the evidence of every person in that body speaking on oath, not to the merits of the pamphlet, but to a plain fact, is to be rejected? This would amount to no less an absurdity, than that the very greatness of the crime might properly become its shelter and defence*.

honour of the university, that he should suffer the most important professorship to be so degraded by his deputy. They lament, that the baldness of the promoter's latinity, the insignificance of his questions, and his total ignorance of logick and theology, have rendered the divinity-schools contemptible.

* The vice-chancellor's supposition is an absurd one, and does not in the least invalidate Mr. Frend's objection. The objection is made by the defendant before the oath is given, and he cannot know for what purpose the witness is called. The question is, whether, according to the civil law, one of the party concerned in the accusation can be a witness, and it matters not whether the party consists of twenty-seven, or all the members of the senate. But the vice-chancellor concealed another circumstance: the act of the twenty-seven was infamous; they constituted themselves an infamous cabal of spies and informers, and, had all the members of the senate joined them, the infamy of the action would have been still greater, inasmuch as the accused person's last resource is an appeal to the senate itself. What chance would he have of justice, if his judges must be taken out of, and chosen by the body of offenders? Let, if possible, than Mr. Frend's was, when it was well known, that in his case, the delegates were nominated by one of the heads of the senate, signed his sentence, and members were sent for from all parts to vote, according to the expression of a dignity of the church, who came upon this errand, against Mr. Frend. Mr. Frend, in the mean time, did not interfere in the least in this election.

The vice-chancellor now addressed the junior part of the university. He would not, he said, animadvert on the noisy and tumultuous irregularities of conduct by which the proceedings on some of the former court days had been interrupted*. He informed them, that their passions and affections had been founded upon some vague ideas, that the accused person had been persecuted. It was necessary to advertise them of their danger, when this country had just escaped an alarming crisis, and every attempt to punish libellous attacks on the constitution and government was called a species of persecution, and contrary to the imprescriptible rights of man. There could be no persecution, where there was fair ground of accusation, and the accused person had had a fair hearing. I feel myself authorised, said he, to interrogate you closely, whether, being educated from the earliest infancy in the practice of frequenting the church, and reverencing her institutions, you are now prepared to say, on reading the pamphlet, that the accusation of impugning the church was either frivolous or oppressive. On the second point, that the accused person has had a fair trial, I have no anxiety. I have no doubt that you will tell your fathers, your guardians, and your friends, that you never heard or read of a trial, where the accused person had a more full, deliberate, and impartial hearing†. You will tell them also, that the only doubt you could entertain of the propriety of the proceedings

* It is absolutely false that the proceedings were ever interrupted; but men without large lungs have ribble muscles.

† There never were seen greater instances of partiality in any trial. The objections of the defence were constantly over-ruled without any reason assigned; the witness could not in his own way, always be asked; the answers called for and recalled evidence, and not worth their weight, and not proper; and if the judge was obliged to let the defence say a few words, as one day he permitted it to the collector, that the accused had employed

It is easy to guard against those who openly attack your religious principles; but I have more apprehensions from those who are perpetually talking of candour, liberality of thinking for themselves, and such like topics, very captivating to the unsuspecting minds of youth.

Remember the earnest advice of one, who addresses you thus, from the purest motives of good will, whose imagination and temper have never been heated with religious disputes, whose pride and ambition have ever been to obtain, in the various branches of useful science, solid information for himself and others, and whose health has been almost exhausted with academical labours; or one who addresses you, not with the authority of a vice-chancellor, but with the affection of an experienced academick; of a person who has never been suspected of being fond of possessing offices or dignities †; who lamented that the necessity of this enquiry should have taken place in the present year, but thought it his duty, when the enquiry was instituted, to go through it with energy, and found it impossible to acquit Mr. Friend of having offended against the statute, without sacrificing every principle of truth, justice, and honour.

The vice-chancellor then read the sentence, and the court was dissolved.

* Then Dr. Milner, president of Queen's college, and dean of Carlisle, does not suppose divinity to have any rank among the useful sciences: we all believed this opinion, but did not think that it would be so unguarded as to mention it in publick, and on such an occasion.

† Dr. Milner is of Germany, and at first could not speak English; but he has since learned it, and has said that he would not decline the office of vice-chancellor, if it was to be filled by that he could not do it, and that he would not do it.

Thus ended the proceedings in the vice-chancellor's court. The day after, Mr. Frend waited on the vice-chancellor, to declare his intentions of appealing to the senate against the sentence of the court; and on the following day, the proctor inhibited the vice-chancellor, in the usual form, from putting his sentence into execution. The mode of appeal and inhibition is stated by the registry in the following words:

Queen's College, June 1, 1793.		
Business of Appeal between William Frend, M.A. and Thos. Kipling, D. D.	}	Before the right worshipful Isaac Milner, D. D. vice-chancellor of the university of Cambridge.

On which day, at the hour of eleven in the forenoon, the said William Frend appeared, and having, in the afternoon of yesterday, declared to the vice-chancellor his intention of appealing from a certain definitive sentence pronounced upon him by the said Isaac Milner, on the 30th of May last, did then and there take the oaths *de gravamine* and *de non sollicitando delegatos*.

At the same place, day, and hour, George Hunter, M.A. junior proctor of the university, appeared, and inhibited Isaac Milner, D.D. vice-chancellor of the university, during the appeal between William Frend, party appellant, and Thomas Kipling, party appellee, in the following words: "Ego Georgius Hunter, procurator alior, nomine academice te Isaacum Milner, procancellarium, iudicem a quo, inhibeo, ne quid, pendente appellatione inter Georhium Frend, et Thomam Kipling attuleris, vel innovare presumas."

Me present.

G. G. BURLACE,

Not. Publ. and R. M.

Business

Business of Appeal	}	Before the right worshipful
between		
William Frend, M.A.		
and		
Thos. Kipling, D. D.		Isaac Milner, D.D. vice-chancellor of the university of Cambridge.

On which day, at the hour of twelve, Thomas Kipling, D.D. and John Beverley, M.A. his proctor, did appear, and did then and there respectively take the oath "de non sollicitando delegatos," in a certain cause of appeal between William Frend, party appellant, and him the said Thomas Kipling, party appellee.

In the presence of me,

GEO. BORLASE,

Not. Publ. and Registr.

PROCEEDINGS

IN THE

COURT of DELEGATES.

FIRST COURT.

University of Cambridge. } Before the right honourable and
right worshipful William Wynne,
knight, doctor of law, the worshipful
John Hey and John Barlow Seale, respectively doctors
in divinity, and the worshipful John Lane and Edward
Christian, respectively masters of arts, judges delegates,
in a certain cause of appeal, or complaint, between
William Frend, M. A. and fellow of Jesus college, party
appellant, and Thomas Kipling, D.D. party appellate, in
the law schools of the said university, on Friday the 28th
day of June, 1793, at nine o'clock in the morning.

Me present.

GEO. BORLASE.

Not. Publ. and Registr.

Edmest.

Business of Appeal between William Frend, M.A. and Thos. Kipling, D.D. } The grace of the senate, 14th June, 1793, appointing delegates in this cause, was read. Also a citation of William Frend, party appellant, and a citation of Thomas Kipling, party appellee. And John Beverley, esquire bedel, was sworn, who deposed, that he had respectively served the said citations on Mr. Frend and Dr. Kipling, who both appeared.

Also was read a paper signed Robert Tyrwhitt, purporting to be a protest against the legality of the aforesaid grace. Mr. Tyrwhitt was heard in support of the protest; and the judges delegates, after deliberating on the same, declared, that they were unanimously of opinion, that nothing contained in the protest ought to prevent their sitting to hear this cause; and that they were ready to do so.

The registry being sworn, deposed, that he had looked over the minutes, since they were returned by the promoter of this cause, in the court below, and that they had not undergone any alteration while in the promoter's hands.

And the proceedings and evidence had and taken in the court below, were read as far as to the act of court 13th of May inclusively.

And the delegates adjourned the court to a quarter past four o'clock in the afternoon of this day.

GRACE for the APPOINTMENT of DELEGATES.

JUDICES delegati in causa appellationis inter Gulielmum Friend, A. M. et Thomam Kipling, S. T. P. electi et dati sunt

Gulielmus Wynne, Eques.

Dr. J. Hey, Sidn. coll.

Dr. Seale, Xti.

Mr. E. Christian, Div. Johannis.

Mr. Lane, Coll. Regin.

Placeat vobis ut prædicti viri sint judices delegati in prædicta appellationis causa *.

SUMMONS from the DELEGATES †.

WILLIAM Wynne, knight, doctor of law, John Hey, doctor in divinity, John Barlow Seale, doctor in divinity, Edward Christian, master of arts, and John Lane, master of arts, judges delegates rightly and lawfully constitu-

* The delegates are nominated by the two proctors, and the members of the caput, except the vice-chancellor. The grace is then read in the houses like other graces. In this case, the master of St. John's brought with him a written list, to which the others, except two, assented.

† The summons is referred to them, how totally ignorant the delegates were of the manner of proceeding in an appeal to the university. By taking upon themselves to summon, it should seem, they were furnished with ground for the generally received opinion, that the grace was a variety of decrees and instructions from the court, which I have observed Mr. Friend. It was therefore to be expected, that the judges would not then Mr. Friend said, if he had been consulted previously, he would have been glad to have taken care to have the summons drawn up in full form and ready for use.

1843,

ted, in the under-written cause, and between the under-mentioned parties, To our beloved in Christ, John Beverley, William Matthew, and Henry Gunning, esquire bedels of the university of Cambridge, greeting. Whereas in a certain cause of appeal and complaint which before us in judgment is now moved and depending between William Friend, master of arts, the party appealing or complaining on the one part, and Thomas Hippling, doctor in divinity, the party appellate or complained of on the other part, rightly and duly proceeding therein, We have decreed the aforesaid William Friend, the party appealing and complaining, to be cited and admonished to attend on the day time and at the place and to the effect and purpose under-written, (justice so requiring.) We do therefore strictly enjoin and command you jointly and severally, That one of you esquire bedels of the said university do peremptorily cite, or cause to be cited, the aforesaid William Friend, the party appellant and complaining in the said cause, to appear before us in the law school of the said university, on Friday the twenty-eighth day of this instant June, between the hours of nine and twelve in the forenoon, then and there to prosecute his said appeal, and to abide in judgement until the final determination thereof, and further to do and receive as unto law and justice shall appertain, under pain of the law, and contempt thereof; and ye shall moreover intimate, or cause it to be intimated to the said William Friend (to whom also we do so intimate by these presents,) That we do intend to proceed, and will then and there proceed to hear and finally determine the said cause of appeal according to law. And that you or either of you shall duly certify to us, what you shall do in the premises, together with these presents. Given under our hand and seal, this twenty-third day of June, in the year of our Lord one thousand seven hundred and ninety-three.

After the summons had been read, the following conversation took place.

Sir W. Wynne. Are the parties here?

Frend. I am the appellant in this cause.

Sir W. Wynne. The delegates are ready to proceed. What is that paper? (to the registry.)

Registry. It is a paper which I received from Mr. Tyrwhitt.

Sir. W. Wynne. Read it.

The registry then read as follows :

Jefus college, 20th June, 1793.

WHEREAS a grace proposing five delegates was read a second time in the non-regent house, on Friday last, and was then suffered to be taken away by the officiating bedel, without a scrutiny ; which grace was afterwards approved by a majority of votes in the other house :

I Robert Tyrwhitt, a non-regent master of arts, do, within ten days, make this open and legal protestation against the said grace.

1. In the first place, because I had not a statutable opportunity of expressing my disapprobation of it, either in whole or in part, though I was present in the house at the time it was read.

2. In the second place, because both the persons who acted as scrutators, were deputies, and neither of them sworn agreeably to the law of the university.

ROBERT TYRWHITT.

i. Stat. Vet. 161. De modo et forma petendi gratias.

Stat. Vet. 80. Quomodo scrutatores tenentur petere gratias.

Stat. Vet. 63. De gratiis petendis.

2. Stat. five gratia. De procuratoribus et scrutatoribus deputatis.

This writing I received of Mr. Robert Tyrwhitt, on the twentieth day of June. 1793. Mr. Tyrwhitt, at the same time, expressed a desire that the same might be recorded.

GEORGE BORLASE, registr.

Sir W. Wynne. Has Mr. Tyrwhitt any thing to say upon this ?

Mr. Tyrwhitt. A great deal on all the statutes which relate to the duty of scrutators and moderators on passing graces : but I did not think that I should be called upon here. I thought another place more proper for this discussion, and accordingly proposed my objections in the senate.

Sir W. Wynne. Do you wish to have the statutes referred to read in the court ?

Mr. Tyrwhitt. If you think it necessary, I do : but I desire it may be understood, that it was not on account of this particular case that I objected : I should have done it on any other matter of more than ordinary concern.

Sir W. Wynne. It must be at your request, if they are read.

Mr. Tyrwhitt. Then I make it my request, that they may be read. My objections were opposed in the Court-house by some persons there, with a degree of pertinence

and violence, extremely unworthy of any member of the university.

The statute was then read

De modo et forma petendi gratias.

Item statuimus quod procuratores vel eorum alter cum occupante vices alterius seu procuratorum vices occupantes quamlibet gratiam petendam privatim scrutari teneantur et quilibet regens alteri eorum votum exprimens secrete respondere præmonitus per alterum procuratorum privatim respondere teneatur et pro secrete habere teneantur tam scrutator quam scrutatus: et qui contra hoc statutum venerit pœnam de secreta revelantibus incurrat. Nulla etiam gratia conditionetur sed pure concedatur vel negetur nec etiam aliqua gratia cum alia concurrat.

Mr. Tyrwhitt. It appears from this statute, that on all occasions the scrutiny should be secret. The putting in of a non placet at reading actually subjects a person to a penalty. It is wrong that the omission of putting in a non placet at the reading of a grace should be made a pretence for depriving any member of his privilege of voting. No person is authorized even to tell in what manner he voted.

Mr. Lane. What do you mean by pretence and omission?

Mr. Tyrwhitt. I mean only to represent the fact. The present practice of taking three steps in the house is a remnant of the original mode prescribed by the statute of rolling round and asking the votes separately and privately, and supposes that a scrutiny has been actually taken. On common occasions, this may be sufficient; but,

but, on such an occasion as this, it is an abuse of what even in ordinary cases is only an indulgence.

The statute *Quomodo scrutatores tenentur petere gratias*, was then read.

Item duodecimo die mensis Octobris anno millesimo CCCC° LXVII° in plena congregatione regentium et non-regentium statutum est atque ordinatum quod scrutatores electi arctentur ad petendum gratias et alia negotia universitatis exequenda secundam formam statuti quo arctantur procuratores eademque poena puniendi sunt si secundum formam prædicti statuti requisiti id facere reculent.

Mr. Tyrwhitt. This shews that scrutators and procurators are in this respect bound by the same laws.

The two other statutes referred to by Mr. Tyrwhitt in his protest were then read.

De gratiis petendis.

Statuimus et ordinamus quod de cætero nulla gratia tempus aut formam concernens petatur nisi in præsentibus cancellarii vice-cancellarii vel præfidentis et hoc in rosa capilli et non alibi concedatur excludâ parva capilli eide cancellaria solvis tamen gratiâ de antiquis statutis si non regantur reservantur concedendis. Nec si aliqua gratia vel gratiâ concedatur quod aliter proci non in tota de hoc communis voce censuerit. Nec si in processu petitionis gratia vel gratiâ concedatur nisi si de ea non sit contentio. Et si in processu petitionis prædictæ gratiâ vel gratiâ concedatur non sit contentio nisi si de ea non sit contentio. Et si in processu petitionis prædictæ gratiâ vel gratiâ concedatur non sit contentio nisi si de ea non sit contentio.

gregatione per cancellarium vel ejus locum tenentem non valeat absolvi. Et ad hujus statuti continuam observantiam volumus singulos procuratores ac scrutatores futuros antequam admittantur ad eorum officia esse personaliter juratos.

Gratia 1575. Quod jurejurando astringantur procuratores et scrutatores deputati.

Conceditur 6 Maii cum procuratores et scrutatores sæpe propter negotia sua privata abesse cogantur a congregationibus et aliis publicis muniis academiæ ut eorum substituti et vicarii jurejurando astringantur ad bene et fideliter peragendum eorum officium antequam aliquid in præmissis pertrahant.

Mr. Tyrwhitt. This provides that substitutes should be sworn before they act; which was not done. Mr. Collier was not sworn before he read the grace. This is the history of the matter. It is the duty of the scrutators and proctors, after reading any grace in either of the houses, to go and ask every member of that house his vote personally. This appears from the bedel's books, from printed books, and every other authority by which the practice of the university is directed. When I was scrutator, I took the votes, though no non placet had been put in.

Court. Is it the usual practice now?

Mr. Tyrwhitt. No: not in ordinary cases: it is connived at. But in extraordinary cases, where any opposition is expected, it ought to be observed. In this case it was known that above two hundred persons came into the university, for opposition that it would be opposed.

Court. Did you take the votes personally in all cases?

Mr. Tyrwhitt.

Mr. Tyrwhitt. No : not in all.

Dr. Hey. In what cases did you ?

Mr. Tyrwhitt. On one grace in particular, which, had I been only a private member, I certainly should have opposed, but, as an officer, I could not.

Dr. Hey. Perhaps the purport of that grace was not very material.

Mr. Tyrwhitt. Yes; it was, in my opinion, very material; it was a matter which I had long and uniformly endeavoured to correct: it was a mandate decree for the master of St. John's college. But I repeat. I did not expect to be called upon here to explain the grounds of the protest: it must therefore be considered as a very short and imperfect account of the business.

Sir W. Wynne. We shall not retire to take it into consideration, till you have said all that you chuse.

Mr. Tyrwhitt. I will tell you then another instance, on which it was done. When the present vice-chancellor was a regent master of arts, a grace had been read in the non-regent house, and passed without a non placet having been put in. The present vice-chancellor, and the present bishop of Lincoln, were adverse to it, and wished it to be read again, and put to the vote. They came very improperly into the non-regent house, and declared, with much violence, that there were persons in the house, who wished to oppose it. I remonstrated upon the indecency of their coming as regents into the non-regent house to make their objections. However, I stated it to the house, and in consequence of my representation, the votes were taken.

Here the court retired for about five minutes; and on its return, Sir W. Wynne said: The delegates have deliberated, and unanimously determine, that nothing contained in Mr. Tyrwhitt's protest, or urged by him

in its support, ought to hinder them from proceeding in this cause; and they are accordingly ready to proceed. We are ready to hear the appellant.

Mr. Frend rose, and after remarking on the unusual step of being cited by them, read the proper mode of proceeding, as described in the bedel's book.

‘The delegates, which, by the statute, are ordered to be at least three in number, and at the most five, pro qualitate causæ, being chosen, the party goes to each of them, desiring them to meet in the consistory, or some other fit place; and when they are met together, he presents the grace unto them as it passed in the senate; and when they have read it, they acknowledge acceptare in se onus commissionis, and declare themselves ready and willing to perform the office of judges in that cause, juxta tenorem delegationis. After acceptation made, the party appellant, or his proctor, doth desire the judges delegate to decree partem appellatam arrestandam fore citra diem eorum arbitrio assignandam, to answer unto such things as the party appellant shall object against him. If the party appellate will then appear, the cause is declared on both sides, and the party appellant hath assigned him ad proponendum in forma on the next court day, wherein such gravamina for the which he doth appeal, must be specified. The proceedings afterwards are ordinary, such as are in cases of the first instance.

He concluded with saying: I beg leave to know, whether this is the mode which is to be followed now.

Sir W. Wynne. We think that the whole proceedings in the chancery's courts should be first read.

Frend. Shall I make any remarks on them, as they go on?

Sir W. Wynne. As you please. But we think it better for the whole to be read first, and then for you to take up
your

your exceptions: unless there is any part which you wish not to be read.

The registry then began to read the proceedings in the vice-chancellor's court; and when he came to the articles of accusation, Sir William Wynne directed the quotations by which the respective charges were supported, to be read from the pamphlet itself.

Friend. They were not read in this place on the trial.

Sir W. Wynne. They ought to have been.

Friend. With submission, Sir, to you, I should think it would be better to read them from the pamphlet in the course in which they were produced on the trial.

Sir W. Wynne. I have no objections. I am willing that they should.

Registry reads to the words 'false, wicked, and malicious,' page 16.

Friend. In my defence, I observed to the court, that in denying the whole, I did not mean to deny every particular. I did not deny that I was a master of arts: I did not say that I was not the authour or publisher: but I gave what, I believe, is usual in such cases, a general answer.

When the registry began to read the depositions of the witnesses, Mr. Friend addressed the court: You will take notice, gentlemen, that I gave into court, and do here repeat my protest against the validity of the evidence, the whole having been violated by the promoter's taking it out of court; and also for particular reasons against particular persons.

Sir W. Wynne. It will be impossible for us to judge, without hearing it all.

D d

Friend. I

Frend. I only meant to save trouble : if it is of no use, it is only a waste of time to hear it.

Dr. Hey. May it not be as well to consider the protest now ?

Sir W. Wynne. Perhaps it may be better. Will the registry say, that the papers, which Dr. Kipling took out of the court, were returned to him exactly the same ?

Bedell. Is the registry to be sworn ?

Sir W. Wynne. I have no objection to his being sworn.

Frend. I would spare the registry the oath, as I conceive it impossible for any person to take it : it is impossible to prove, or to be certain that the papers have not been altered. Except in the divinity schools*, I never heard of a proof being called for of such a negative proposition.

Sir W. Wynne. This is a court of justice, and we think it highly proper : they ought to be proved to be the same.

Mr. Frend then repeated the protest and the case of the jury, page 115, as a case in point. This was denied by Mr. Lane; and a short conversation followed, in which Mr. Frend maintained, that if not strictly in point, it yet concluded a fortiori in favour of his protest. For if the bare examination of a single witness out of court, by a set of uninterested and unprejudiced men, merely that he might repeat what he had said before in court, was

* An opponent in the divinity schools asserted, that something was not to be found in the new testament : Dr. Kipling, with his usual acumen, insisted that he should prove the assertion ; and it was in vain that the opponent requested him to point out the passage in which it was to be found. *Tuum est, said the learned professor, probare minorem.*

yet sufficient to set aside their verdict : how much more must the removal of the whole evidence affect its validity, when taken out of court by the promoter himself, and with the express purpose of directing it in the most forcible manner to the conviction of the offender ?

Here the registry repeated the declaration he had made in the vice-chancellor's court, that the papers had undergone no alteration, and that he was ready to swear to this. He was accordingly sworn.

Sir W. Wynne. Are the papers which Dr. Kipling returned to you, the same which you gave to him ?

Friend. Can you say that there are no marks, no erasures, no obliterations, no alterations whatsoever, made by the promoter ? Did you look all the papers over ?

Registry. I did look them over, and they have not undergone any alterations while in the promoter's hands.

Mr. Friend now observed, that having no expectation, that the proceedings of the vice-chancellor's court would be thus taken up, he had not brought with him the copy of the evidence delivered to him by the registry : he desired therefore permission of the court, to go to his rooms for them. This being granted, Mr. Friend went out, and Mr. Lambert took the opportunity of going out for the notes which he had taken during the whole of the trial. On their return, the reading was resumed, and very little progress was made before Mr. Friend observed the omission of a word in his copy.

Registry. Your copy is not attested by me.

Friend. It has not your name to it, but it is on a proper stamp ; it is marked as having been examined ; it

ought therefore to be literally exact. If it is not exact, for what purpose was it given to me?

The registry went on reading; and Mr. Frend, after remarking repeated variations, observed, that if mistakes of this kind are so easily made in copies taken and examined as accurate, it must be extremely difficult to swear to the identity of writings.

When the registry read the resolutions and signatures, p. 34, 35. Mr. Frend asked him, whether they were given to the promoter?

Registry. Yes; I presume they went with the other papers: I cannot be certain. But if they did, they returned as they went.

On Mr. Lunn's evidence, Mr. Frend observed, that no notice was taken of the objection and answer of the commissary, p. 42. but that the gentleman who assisted him in taking the notes of the trial, is ready to swear that he did object. He observed, at another time, that the depositions of each witness had been transcribed all together, without any distinction of the different times in which he had been called up; and that the registry was now reading them in such a manner, that the delegates might conclude it was all one continued deposition. He begged leave to recommend the same order in reading the depositions, as had been followed in the proceedings at the trial.

Registry. I cannot speak to the order.

Frend. This is another instance of the irregularities on this business.

On Mr. Plamplin's evidence, p. 51. Mr. Frend observed: Here is another omission of important matter. No notice

notice is taken of my objection to this man's evidence. I excepted to him on two grounds. Mr. Lambert is ready to attest it. Mr. Lambert here rose and offered to make oath of the above, but the court rejected his offer; Sir William Wynne declaring, that they could not attend to any thing not in the registry's minutes*.

On Mr. Hodson's evidence, Mr. Friend observed, that Mr. Marth was called in, but the registry had taken no notice of that circumstance. This ought to be attended to, as it proved the ground of a serious complaint from Mr. Marth, of the treachery which had been practised against him. He had been promised, that, if he were called upon to give evidence, it would not be with any view of proving the publication: whereas on the trial it appeared, that he was called upon for that very purpose. Mr. Friend then desired that he might read what Mr. Marth had said in court, as it would establish his charge of malice in the prosecutors.

The court said, that as this did not appear on the minutes, it could not come before them.

On Mr. Alger's evidence, Mr. Friend observed: The court does not perhaps see the tendency of these questions and answers. That copy of the pamphlet had been taken out of court, and the commissary himself had expressed his surprize at it. Several other remarks were made by Mr. Friend on various parts of the depositions, proving their inaccuracy: and at the close of them he observed, that the whole of the evidence was so inconclusive, that the judges to have formed any opinion upon it; that the proceeding of the court had been very irre-

* We added, that W. Wynne, in this case, had affirmed, that it was not his intention to do any thing but to examine the witnesses, and that he was not going to try the cause, but to leave it to the jury to do and determine. This was a very extraordinary declaration.

gularly recorded ; that all that had passed ought to have been registered ; for, as the vice-chancellor took upon himself to make the heads concur with him under a law, which required the consent of the majority, and the master of Trinity, without whom that majority could not have been formed, was absent several days, the proceedings should have been taken down with accuracy ; otherwise the master of Trinity had no opportunity of forming a judgment. Indeed he must have been totally unacquainted with the nature of many objections suggested by Mr. Frend ; and yet, without his concurrence, no recantation could have been proposed. This was a grievance exceeded only by that which could not have escaped the observation of the delegates, since it was manifest to every person, that from the beginning to the end of the business, the prosecutors and the judges were one and the same party.

The third article having been read, p. 64, Mr. Frend addressed the court : When this charge was read by the promoter, I objected then, and I must repeat it now, that no such passage was to be found in the book, as that which the promoter articulated against me. But there is no entry of this objection in the *acta curiæ* : which proves that the master of Trinity could not be a competent judge in the case. He heard none of my objections to the mode of quoting mutilated passages, nor of my proofs of the necessity of producing the words themselves.

On article the fifth being read according to *acta curiæ*, page 64, Mr. Frend observed, that here again the master of Trinity could be no judge, not having heard either his, or the promoter's remarks. The promoter, by way of directing the proceedings of the court, produced the case of Charke ; but being questioned, whether Charke had been summoned to appear in the vice-chancellor's court, and on several

several other points necessary to establish his case as a precedent, could say nothing, though the master of Trinity, from what appears in the *acta curiæ*, must naturally suppose that it was admitted as a case in point.

Dr. Seale. Did not the judge suffer every thing to be stated, which you expressed a desire to have inserted?

Mr. Frend. No: he ordered the registry to mind what he said, not what I said.

When the registry had finished the *acta curiæ* for the thirteenth of May, p. 64, the court was adjourned to a quarter past four in the afternoon.

SECOND COURT.

Before the right honourable and right worshipful William Wynne, &c. on Friday the 28th day of June, 1793, in the afternoon, &c.

THE rest of the proceedings and evidence in this cause were read.

And the judges then declared, that the proceedings with the evidence had and taken in the court below, having been read and gone through in this court, they the judges now called on him Mr. Frend to proceed in his appeal.

Mr. Frend objected, that a certain paper relative to the sentence in the court below, and signed by the heads of colleges, had not been read. The judges enquired of the registry for that paper, who declared that it was not committed to his custody. Mr. Frend then declared,

that

that he conceived he was not, by the statutes, [or practice and usage of the university] held to proceed in his appeal till the next court day, particularly by the 48th statute, and an interpretation of the same, dated Oct. 6, 1596.

The judges having considered the said statute, and the interpretation, were of opinion, that the interpretation had no reference to causes of appeal; and again called on Mr. Frend to proceed on his appeal. Mr. Frend declared, that he was not yet fully prepared. The judges deliberated; and declared they would hear Mr. Frend to-morrow, immediately after the morning congregation. Mr. Frend objected, that to-morrow being a holy-day, was not a dies juridicus: but the judges over-ruled this objection.

And the court was adjourned accordingly to to-morrow after the morning congregation.

When the registry came to the vice-chancellor's declaration in the *acta curiæ* of the 28th of May, p. 168, that he was satisfied that Mr. Frend was proved to be the author and publisher of the pamphlet, Mr. Frend observed that this was very improper: it ought to have been, we the vice-chancellor and heads of colleges are satisfied. How else does it appear, that they were convinced? and unless they were convinced, how could they sign the subsequent resolutions and sentence? The proceedings of this day are very imperfectly recorded. I should have spoken then on the form of the recantation proposed to be signed, but was prevented very abruptly by the vice-chancellor, who adjourned the court very improperly, without giving me an opportunity of being heard.

On the *acta curiæ* of the 30th of May, p. 172, Mr. Frend observed, that he brought a paper, which was not allowed to be entered on the proceedings of the court.

Sir

Sir W. Wynne. Nothing of this appears on the record.

Frend. No, Sir, because it was not allowed.

As soon as the registry had closed the reading of the papers, Sir W. Wynne asked for the resolutions at Queen's college, and then addressed Mr. Frend: We have heard now all that has passed hitherto, and are ready to hear what you have to say.

Frend. I observe, Sir, that you have not yet heard all; there were certain resolutions entered into at the vice-chancellor's lodge, which you just now seemed to enquire after, but which I did not know that you were aware of.

Sir W. Wynne. They are not here; we know nothing of them*.

Frend. I beg that the delegates may know that such resolutions were passed at Queen's college.

Registry. There is no copy of them in court.

Frend. There was a copy sent to me. The sentence has been read: the resolutions were brought into the vice-chancellor's court, and should have been read as part of the *acta curiæ*.

Sir W. Wynne. They are no part of the proceedings submitted to us.

Frend. Then I shall be ready to produce my *gravamina* on the next court day.

Sir W. Wynne. We are ready to hear them now.

Frend. It cannot be, I apprehend, on this day.

Sir W. Wynne. Why not?

Frend. Because it appears from the books by which the practice of this court is regulated, that the griev-

* How could Sir W. Wynne then be ignorant of them?

ances are not to be produced till the next court day. I shall read an extract from the bedell's book, in proof of my assertion. Having stated that a day is to be appointed for the appearance of the party appellate, it goes on, 'If the party appellate will then appear, the cause is declared on both sides, and the party appellant hath assigned him ad proponendum in forma on the next court day, wherein such gravamina, for the which he doth appeal, must be specified. The proceedings afterwards are ordinary, such as are in causes of the first instance.'

The only question now is, when the second court day is to be: and this is explained by an interpretation of the heads, Oct. 6, 1596, which direct that the second court day can only be some court day in the following week. The interpretation runs in these words: 'Whereas it is carefully by statute provided, that all causes and controversies hereafter commenced or coming before Mr. Vice-chancellor, should, with great expedition, be adjudged and determined: yet notwithstanding it is of late years come to pass, that causes are often a very long time delayed and protracted, not only to the great trouble of the magistrate * * * * of suitors, and their extreme charge and hinderance, but even to the discredit of the court and university.

'For remedy whereof, Mr. Roger Goode, doctor in divinity, vice-chancellor of the university, and the heads of colleges, whose names are underwritten, have and do interpret and explain a doubt rising of a branch of the former part of the 48th chapter of the statute intituled, *De causis forensibus*, and beginning thus: *Omnes causæ et lites quæ ad universitatis notionem pertinent, &c. finem autem recipiant infra triduum si fieri potest omni juris solemnitate servata, viz. in these words: infra triduum si fieri potest, that all causes and controversies, whatsoever wherein the vice-chancellor is competent judge, shall be by him, or his deputy, adjudged, determined, and resolved,*

within three several ordinary court days, and those within three weeks next immediately following, (saving and excepting such weeks and court days as by law are to be excepted, as dies non juridici,) the first day of the three to be the first court day next after the day upon which the party defendant shall or ought to make his personal appearance, and the other two, the two ordinary court days in the two several weeks next following, without any fraud or further delay.'

Sir W. Wynne. The interpretation does not appear to refer to the causes of appeal, but only to proceedings in the vice-chancellor's court; and therefore you should be ready now.

Frend. I came here with the best information, I could procure from the statutes and the books of practice, relative to the course which I was to follow in these proceedings.

Dr. Hey. Are the books called the bedell's books, Bucks' books, or what authority have they?

Frend. All proceedings in causes of appeal to delegates, must be conducted in the same manner as cause forenses, except in the preparatory part, which is regulated by these books.

Sir W. Wynne. I cannot tell what authority is ascribed to these books. They can have none, but as it is confirmed by the practice of the university.

Frend. I can only revert to them as the best directions I could procure.

Sir W. Wynne. Why cannot you enter on your gravamina now?

Frend. Because I am not prepared. I came here this day with the expectation of hearing that the cause would be proposed, and that then you would appoint some court day in the next week for me to produce my grievances.

The delegates now retired for nearly half an hour; and on their return into court, a little before six, Sir

William Wynne addressed himself to the appellant: Mr. Frend, the delegates are willing to allow you all possible indulgence, and therefore will allow you till to-morrow morning, after the congregation, to enter on your defence.

Frend. Gentlemen, to-morrow is not a *dies juridicus*; it is a saint's day; there is a sermon in the university church. The proceedings in this very cause in the vice-chancellor's court were put off two days on the same account. I believe that the master of Catharine-hall suggested the propriety of it, and the court acquiesced in it.

Sir W. Wynne, (to the master of Catharine-hall.) Was your objection founded on the reasons urged by Mr. Frend?

Master. Not at all. I only did it as inconvenient on account of the sermons.

Frend. I must still maintain my objection to the appointment of to-morrow for hearing my gravamina as informal and irregular.

Sir W. Wynne. We take that irregularity upon ourselves, and will allow you no further delay than till after the congregation to-morrow morning: the sitting to be resumed after the congregation in the afternoon.

Accordingly the court was adjourned.

THIRD COURT.

Before the right honourable and right worshipful William Wynne, &c. Saturday the 29th day of June, between the hours of twelve and three, &c.

THE minutes of the two courts of yesterday were read: and in the latter, after the words "he was not, by the statutes," were inserted the words "or practice and usage of the university."

Mr. Frend then read and presented a protest against his being called upon to produce on this day his gravamina,

mina, and desired it might be entered on the records of the court.

The court was unanimously of opinion, that Mr. Frend should now proceed to the gravamina.

And Mr. Frend did proceed to the gravamina accordingly; in the course of which he read to the court a paper, which, he alledged, he had been prevented by the vice-chancellor from reading in the court below, before sentence was pronounced upon him.

When Mr. Frend had finished, Dr. Kipling was called upon by the court, and asked if he was then ready to reply.

Dr. Kipling declared, that he was then ready to answer to interrogatories from the court: but that he had heard nothing that day that he desired to answer.

The court declining to put interrogatories to Dr. Kipling, he declared that he was willing to submit the whole to the judgement of the court.

And the court was adjourned, to sit after the congregation in the afternoon of the same day.

After the registry had read his papers, Mr. Frend rose, and desired leave to observe, that he had not objected to the production of his gravamina on this day, merely on account of the interpretation of the statute applying particularly to cases of appeal: the application of that interpretation was universal, and related only to the explanation of time meant to be allowed in all cases by the word *triduum*. My objection, continued Mr. Frend, was, on the ground of practice, collected from the instructions handed down as authority for the publick officers of the university.

Sir W. Wynne. There can be no objection to any plea from custom, usage and common practice, that

day was certainly objected to by Mr. Frend, but the objection was not admitted to have any weight.

Dr. Hey. I would not be understood to have acknowledged the authority of the bedell's books; I asked if they were Bucks' books, but received no answer.

Bedell. Bucks' books are here in court, and may be consulted, if you wish it.

Dr. Hey. Not at all.

Mr. Frend then addressed the court :

Gentlemen,

In the situation in which I stand, it cannot be supposed that I wish to offend any of the delegates; and in the step which I am about to take, I request you to consider me as acting upon motives which affect every member of the senate, and as being here not only to complain of private grievances to myself, but to withstand every proceeding which may hereafter be brought as a precedent to the injury of the members of the university. With this view I entered my appeal from the sentence of the vice-chancellor and the heads; and to support this appeal, I have endeavoured to gain all possible information on the proper mode of carrying it on. I stated yesterday what I gathered from the bedell's books as the most authentick guides which I could follow. This I considered, and still consider as the proper rule of this court, and without pretending to call in question your honour and integrity, I must protest against what appears to me an unjustifiable precipitation in this business. In the most respectful manner therefore, I do desire that my protest may be taken into your serious consideration, not on my own account merely, but that I may not by any conduct of mine lay the foundation for a precedent, by which others may hereafter be offensively injured.

PROTEST.

P R O T E S T.

I William Frend, M. A. and fellow of Jefus college, in the univerfity of Cambridge, do hereby proteft againft my being called upon to produce on this day my gravamina in a certain caufe of appeal now pending before Sir William Wynne, LL.D. John Hey, D.D. John Barlow Seale, D.D. John Lane, M. A. Edward Chrifian, M. A.

For the following reasons :

1. Becaufe the proceedings in all caufes of appeal muft be directed either by the ftatutes and interpretations, or the ancient and constant praftice of the univerfity : but the ftatutes and interpretations are all filent as to the proceedings in caufes of appeal. Therefore there remains only ancient and constant praftice by which they can be directed.

2. Becaufe in certain books called the bedell's books, the authority of which in matters of praftice is always admitted, exprefs directions are given for the party appellant to fpecify his gravamina on the next court day after that on which the caufe has been declared.

3. Becaufe by the interpretation given by the heads, Octob. 6, 1596, of the word triduum, it appears that the next court day can only be underftood, of the next court day of the enfuing week.

W. FRIEND.

Having read this proteft, Mr. Frend fign'd it, and having delivered it into court faid : If, after the proteft, you think me obliged to proceed, I am ready.

Sir W. Wynne. We are unanimous in faying, that you ought to proceed now.

Mr. Frend then addreffed the court, in thefe words :

I am ready.

Reserving to myself, gentlemen, the right of making, if necessary, my exceptions to this mode of proceeding, I shall, without further delay, state the grievances under which I have laboured. I have called, and do call the prosecution malicious. A proof of malice, and that the prosecution never originated in a pure love of justice, or a simple regard to propriety, is, that a knowledge of the means of punishment appears always to have fallen far short of the desire to inflict it. When the former has been nearly extinguished, the latter has blazed with unabated flame. At the first meeting of my prosecutors, it was determined, after some debate, that I should be prosecuted in the vice-chancellor's court, for having publicly and notoriously offended against a grace passed by the senate of this university, in the year 1603, in preference to a prosecution for having violated the statute de concionibus, and without any mention of other laws: but at a subsequent meeting it was agreed, that I should be prosecuted for having publicly and notoriously offended against the laws of the university, without specifying any in particular. Now, amidst this uncertainty and fluctuation of council, if my prosecutors had been actuated only by a regard for justice, or, indeed, if they had not been entire strangers to that virtue, would not some one of them have said; If there is so much difficulty in finding out any law against which Mr. Frend has offended, how can he be said, to have violated any publicly and notoriously? Or how can we plead a sense of duty or conscience in endeavouring to bring him to punishment?

Another proof of malice is, that many of the charges brought against me, have been founded, not on any undoubted passages in the book, but have been supported by passages misquoted, and mutilated, not only by the insertion or omission of particular words, but by leaving out whole propositions.

I am said to have defamed the liturgy, by asserting, that it is far from the standard of purity in doctrine only ; but in the original it is said, in its arrangement, language, or doctrine. If the promoter, and the cabal, had not been actuated by the fiend of malice, they could not have suppressed the other particulars, nor have represented me as charging that imperfection upon a single point, which they must know the authour had expressly charged upon the accumulated defects of all the three. As well might I be said to defame the most beautiful woman in England, by a comparison of her beauty with the Venus de Medicis. Suppose me to have said that, considering attitude, figure, and grace, she was inferior to this celebrated statue ; is that saying, in figure or 'y she was so much inferior as to have no pretensions to beauty ? These are two out of an infinite variety of circumstances on which I ground my charge of malice in the prosecutors. I wish the promoter may be asked if he has any thing to reply which can repell this accusation.

Sir W. Wynne. You are to go on in producing all which you have to alledge.

Frend. Is the promoter to answer at any other time ?

Sir W. Wynne. He is to do as he thinks fit as to his answer.

I come then to the second grievance :

II.

I was cited to appear on the statute de concionibus, in the vice-chancellor's court. It was because I was then, and I am still, firmly persuaded that the vice-chancellor's court had no business whatsoever with any of the offences described in that statute, that I entered my protest, which

is now in possession of the court. It is not necessary to repeat it here, as it has already been read. This, gentlemen, I feel to be a very particular and extraordinary grievance, that I was cited to answer for the violation of a law, which was not cognizable in the court before which I was summoned to appear.

III.

I have charged the promoter and the cabal with malice: I have now to impute to the vice-chancellor himself a bad design, in endeavouring to effect my punishment by two different and distinct laws. He could not be ignorant, that no person had ever been punished in the vice-chancellor's court on the statute de concionibus; so that, had not I been aware of the non-existence of the grace of 1603, he might, and doubtless meant to have proceeded to punish me upon it. There was another artifice in the vice-chancellor, which cannot be imputed to any but a base design. This consists in availing himself of the authority of a vice-chancellor's court, to compell evidence upon oath: which could not be done by the vice-chancellor and heads of colleges assembled under the authority of the statute de concionibus. All evidence there, he well knew, must be voluntary. The impropriety and injustice of having been subjected to appear for the same offence on two distinct laws, cognizable before two separate jurisdictions, must be obvious to you, and to every person in the least acquainted with the laws of this land. Suppose, for instance, a justice of the peace, after hearing evidence at the quarter sessions, should, upon the strength of that evidence, take upon himself to punish, when he got home, the accused person by his own authority, would such a proceeding be esteemed legal? Could a punishment be inflicted by a single

magistrate,

land; nor any man even here, except such a man as actually suffered it. This, gentlemen, I do then complain of as a most serious grievance, of a singular and alarming nature, that the prosecutors and the judge, in my case, made one and the same party.

V.

Perhaps after the recital of such grievances, it may be thought superfluous in me to produce more: but as was the commencement of this business, so was its progress, and such was its end: it was begotten in malice, fostered in treachery, and accomplished in oppression. Gentlemen, you have heard read, what are called the proceedings of the court upon my trial: they are not the proceedings of the court, but a very different thing: indeed, so totally different, that unless my friend Mr. Lambert, and myself, had assisted in supplying deficiencies, in rectifying the order, and disentangling this chaos, it would have been impossible for you to have proceeded. Had they been put into your hands in such a state, without comment or observation from us, I defy any man to have understood the purport of them, or to have formed a just judgment upon the issue. It is with truth I assure you, that with all the assistance of notes, taken during the whole of the trial, and every advantage of personal recollection, Mr. Lambert, and myself, were more than six hours laboriously employed in arranging and reducing them to an intelligible order.

This defective and disorderly statement of matters, which are supposed to have been exactly recorded, and the omission of a number of particulars, which I conceive to be essential to my vindication, I must consider as another grievance. I am precluded from all remedy here, unless I were allowed to call witnesses, to attest every omission

omission which I have remarked : but the calling of evidence now would be of no avail ; since your decision is to be guided only by papers before the court. Yet these papers contain no account of my protest against the admissibility of certain witnesses, none of my observations on the irregularity in the proceedings ; on the impropriety of examining witnesses in presence of each other ; of reminding them not only of what each other had previously deposed himself, but what others had sworn before ; of dictating to the witnesses the answer they were expected to give ; and of admitting the evidence of persons interested in the prosecution,—nay, of persons who were themselves principals in the prosecution.

VI.

The sixth grievance is of such a nature as requires barely to be mentioned in a court of justice. After I had appeared to the citation for four days together, and the examination of evidence was all finished, and taken down in writing by the registry, this very writing was taken out of court, and put into the hands of the promoter, the prosecutor, the very man from whose wicked and malicious designs I had most to fear, and for the very purpose of carrying those designs most effectually into execution. This I have maintained, and I do still maintain to be an act which in any court of justice ought to invalidate the whole ; and that, in fact, from the moment when the registry's minutes went into the possession of Dr. Kipling my judges had no grounds whatever to decide upon.

VII.

The vice-chancellor having been defeated in his design of entering the error on the printed list of

1603, and not being able to proceed on the statute de concionibus, without the concurrence of nine heads, it was necessary that the master of Trinity should complete the number: but the master of Trinity, though present in court the first day, had been absent on all the examination of evidence, nor did he return into the university till after the proceedings of the court had been in the hands of the promoter: he could therefore have nothing on which to ground his opinion, or by which he could justify his concurrence in the sentence.

Here the master of Trinity got up, and asked if he might speak a few words; but Dr. Wynne observing, that it was not necessary, Mr. Frend went on: I do conceive this to be very just cause of complaint, that without any authentick evidence at all, or on such a miserable representation of it, the master of Trinity should bring himself to join in a sentence, which, without his concurrence, could not have been passed.

VIII.

But supposing the master of Trinity to have been present all the trial, and the vice-chancellor to have acted with the due concurrence of the statutable number of assessors, the first thing which the statute orders to be done is, that the offender should be required to recant. This, gentlemen, was never done; no recantation was ever proposed to me: a paper indeed was put into my hands, which the vice-chancellor thought proper to call a recantation, but which, on perusal, I found to be absolutely unintelligible on the one part, and unreasonable on the other. I would have expostulated upon it at the time when it was first given me, but was silenced by the violent noise of order! order! from the vice-chancellor, and the court was adjourned, and indecently adjourned. I brought,

brought, the next court day, a paper containing my objections into the court, but was prevented from reading it, by the menacing language of the vice-chancellor; and with much difficulty I prevailed upon him to take it, and look at it himself: he returned it to me, and would not permit it to remain in court. I will now read it, and put it into your hands for your consideration.

Sir W. Wynne. You may read it as part of your speech.

Here Mr. Frend read the paper.

This paper I attempted in vain to read in the vice-chancellor's court. I will now sign it, and deliver it into this court.

Sir W. Wynne. I do not know whether it is any part of the process.

Frend. I must submit to you, whether you will receive any paper at all from me.

Sir W. Wynne. Certainly not.

IX.

Then my grievances are far greater than I had ever imagined: for if the vice-chancellor's reception of any paper, which I offered to him, is a reason against its being admitted here, by acting as he did, he added to the injustice of his conduct, and aggravated the injury, by precluding me from the possibility of redress.

X.

My next appeal is to the abolition which I produced in bar of sentence, and by which I had been regularly acquitted by the vice-chancellor at the end of the term,

of all statutable offences previously committed by me, and had been formally restored to God and the holy sacraments *. These, gentlemen, are solemn words: and if the vice-chancellor thought proper to treat it with contempt, I still maintain, that either I stood absolved by it from any charge which had been brought against me for violation of the statutes, or the university is three times in a year guilty of the most flagrant impiety in the sight of God and man.

Whatever degree of superstition may be charged upon our ancestors, there was wisdom in such a provision as this; they did right to discourage and to check all those iniquitous cabals, by which studious men might be molested, and the progress of literature and science be suspended by the interruption of suits and litigations. It is very natural that this observation should be treated with ridicule by the promoter, the subpromoters and the familiars: but let them remember that they derive their ranks, their degrees, and their offices in this place, from the very same authority to which I now appeal; and let not them deride a salutary law, tho' it may have originated in the impure sources of ignorance and superstition. How much soever we may now despise the pretended power of any person to absolve, it is ordered expressly by the statutes that the vice-chancellor should pronounce absolution at the end of every term; and whatever exceptions may in these times be taken as to the form, whatever have been the notions on which it was founded, the regulation, I repeat it, was wisely calculated for this place. Should any literary man subject himself here to prosecution, the established authority says, let him be fairly tried, let him not be kept in suspense to the detriment of his own pursuits and the injury of literary enquiry. It was foreseen that a number of ignorant or malicious men, people of no occupation and

* See page 177.

of no principle, might cabal together against an individual, whose activity and industry might render him obnoxious to them. The university says, We will countenance no such proceedings: we will put a stop to litigation and suspension: no man shall be harassed by tedious prosecutions: no man shall be interrupted in his studies for more than one term: at the end of every term the vice-chancellor shall absolve. It was on these considerations that I felt myself entitled to the protection which the university intended to hold out to men of letters and application; when I found myself, after a number of fruitless remonstrances, compelled to resort to it, it was under the full persuasion that I was vindicating the honour of our institutions; and, when I saw my appeal treated with contempt and ridicule, I felt that, in my person, were insulted the rights and privileges of the senate.

XI.

Another grievance is, that the sentence does not relate to any offence positively prohibited in the law under which I am tried: for the statute *de concionibus* says nothing about either printing or publishing a book. It describes only sermons, common places, theses, and such other publick discussions, as fall of course under the immediate cognizance and observation of the vice-chancellor and heads, who are supposed to attend upon them.

I have indeed heard it said, that the word *liber* publice imply all modes of making publick whatsoever, and that the publication of books must be included in it. But no person at all acquainted with the interpretation of penal law can maintain such a position: a general title annexed to a particular enumeration of offences, cannot, by any legal or fair construction, relate to any other kind

of offence than such as had been before specified. Now the very title of this statute de concionibus, marks out at once the nature of the offences to which it was meant to apply, and the publick manner of conducting the several exercises enumerated in it, (which are all supposed to be performed in the presence of the vice-chancellor and heads of houses,) plainly shews, that ‘*aliter publice*’ must mean only some other such kind of publication as had been before recited.

In what I have advanced on the construction of a penal law, I am justified by the express authority of a person very learned and most respectable in the civil law. (Here Mr. Frend quoted the opinion of Dr. Harris, upon the statutes of Jesus college, and applied the opinion which he gave on that case to the proceedings of the university.)

I am ready to acknowledge, that had I maintained any offensive doctrines in a sermon, common place, or thesis, or in any other such publick manner, whether in speaking publickly in the schools, in the senate, or in any other place, and on any other occasion, where the duty of the vice-chancellor and heads require them to be present, I should indeed have been liable to their censure under this statute. So far from this, I am punished by the vice-chancellor under this statute for my temerity in writing a book: but be the contents of that book what they may, the authour is not liable to be punished for them under that statute: he may print a book in London—he may do it privately—however he does it, he does not necessarily for that fact come under the cognisance of the constituted authority. It exceeds the authority of the vice-chancellor and heads, to punish any man for his temerity in writing a book.

XII.

But the publishing of a book makes only part of the offence. The promoter indeed did employ much time and great labour in attempting the proof of this; he should have recollected, that the proof of any criminal assertion in that book was equally necessary to establish the offence as the proof of the publication itself: but this was never done. Supposing me the authour, there is no proof whatever that I said any thing in that book which subjected me to punishment. The promoter endeavoured, by garbling sentences, and mutilating passages, to make up a kind of charge against me; but it was requisite that particular passages should have been faithfully and literally quoted, and particular errors demonstrated to have been fairly deduced from them. I shall read you part of the opinion of the same learned civilian I have already quoted. (Passage read from p. 16.) This is the declared opinion of a person of great authority in the civil law, whose opinion is frequently taken by men of this university: and I do declare, that it has no where been proved that I have maintained any position contrary to the doctrine or the discipline of the church of England, as by law established. The promoter could not support the charge, and the criminality of the pamphlet still remains unproved.

XIII.

But, after all, supposing that the crime had been fairly proved upon me, and that the vice-chancellor was legally empowered to proceed upon the statute de concionibus, still no sentence could be pronounced, no punishment inflicted till the guilty person had been required to recant. Recantation implies error, and this error must be spe-

cified before it can be acknowledged, or given up. No such thing has taken place in the course of these proceedings: I was required to retract from the error and temerity of publishing a book. Gentlemen, it was insolence in the extreme to put such a paper into my hands, as what they called a recantation. I am very sensible that I am speaking now to gentlemen as well as delegates, and I will not scruple to say that no man of letters could consistently put such a paper into my hands: much less could I be so base a scoundrel as to sign it. The paper specified no errors; nor did my judges in fact desire it. If they had, they should have come forward fairly and said, You have maintained such and such opinions, which we judge criminal, and we therefore require you to retract from them. But this neither the promoter, nor my judges did; and why not? The reason is obvious: because their purpose was not to reform, but to punish; not to reclaim, but to get rid of me. The promoter and his cabal had agreed, that punishment should be inflicted without my being offered the opportunity of retracting.

Let me see, then, what are the errors which they pretended to article against me; and what ought to have been the recantation proposed by my judges:

1. I am first accused of having defamed the liturgy of the church of England. It is almost sufficient to reply, that this has nothing to do with the statute de concionibus: yet, suppose it had, what ought to have been the language of the court? You have defamed the liturgy; you have maintained it to be inferior to other rituals; and we require you, in express words, to acknowledge your fault, and to retract from such positions. Why, Gentlemen, was this not done? because I had plainly said in my defence, that I had read many liturgies, and scrupled not to declare, that, taking it altogether, the liturgy of the church of England was the best established liturgy I had

ever seen. They well knew that such a recantation I might have signed at once, without the smallest scruple: it was my real opinion, formed, not, as my accusers take up their notions, without reason or examination, but upon much reading, and serious enquiry.

2. I am next charged with having called the church of England idolatrous; if there was any meaning in the article, what ought to have been the form of recantation? simply this: You have asserted that the church of England is idolatrous, we require you to disclaim that assertion, and to acknowledge that it is not. Gentlemen, my accusers could not seriously make such a proposal to me; because they must know, that through the whole of the work the assertion had never been made. I declared in my defence, and I repeat it now, that I never called it idolatrous. The charge is a lie. They were afraid to put my vindication on that ground. The question is not now, whether I am, or am not the author of the pamphlet: but whether in any part of the pamphlet the church of England is said to be idolatrous: if it were, I again insist that I ought to have been required to retract from the assertion, and warned of the statutable punishment, if I would not. Gentlemen, the whole of this accusation arose from the ignorance of these wretched men, unable to compare the different forms of worship which prevail in different churches in Christendom; they imagined that, what was strictly true of the greater part of them, must be meant of all. Does then the church of England associate with the worship of the true God, the worship of created beings? Who ever said, or supposed this? I never did. Had the writer of 'Peace and Union,' or any other person said so, that is nothing to this case; I do not think it, and indeed it was never suggested by me. I do not then very unnecessarily, that of two persons implicated in me, I do not in the main justify either?

8. The third error articulated against me is, that all ecclesiastical courts, ranks, and titles, are repugnant to the spirit of christianity: this also is an infamous lie: I never said this, nor ever thought it. I leave the cabal, and the judges, to reflect that I pronounce the imputation to be an infamous falsehood: there is no such sentence in the pamphlet from which they pretend to have extracted it. The word ‘are’ is put in, and the word ‘hence’ left out; and such insertions and omissions of words, such perversions and distortions of meaning, arise from the most abominable wickedness: it is infamous treachery. Gentlemen, you must pardon me, if I am warm upon this occasion; it is not myself, but the university and its members that I am protecting against the intrigues of judges, managers, and caballers. I said plainly in my reply to this charge, that ecclesiastical courts, ranks, and titles, are not all repugnant to the spirit of christianity. I produced from scripture express examples; whose authority I willingly acknowledged, and whose expedience I readily saw. But suppose that I had said all which I have been misrepresented as saying, here again the mode of proceeding, such as the statute required, was plain and obvious. The vice-chancellor should have said: You have maintained all ecclesiastical courts, ranks, and titles, to be unchristian: it is an error—will you retract from it? if not, you must be banished. Why was this not put to me? I answer: because my enemies knew that I should at once have answered, such an assertion is indeed an error: it cannot be maintained: I do most willingly disclaim it.

Can any thing more be wanting to strengthen the proofs of their malice? Is this just judgement? Is this the conduct of an equitable and upright judge? No, Sir, it is wickedness—wickedness of no common kind, nor such as ordinary men are subject to: it is not ignorance, but passion—deliberate, abominable passion—the result of malice

lice and hatred, the project of vicious minds, warpt by the desire of gaining infamous preferment. Who can hear of such proceedings, without pronouncing them abominable, shameful, scandalous !

I have been punished for a breach of statute of which I am not guilty : if I had been guilty, and had not retracted, then indeed in the proper place I might have been subjected to the sentence decreed.

4. The last error charged against me is, that I have profaned the most holy offices of the church. But here again the law on which I was tried is totally silent: the statute *de concionibus* says not a syllable on this head. If therefore I had been guilty of either profaning or ridiculing the offices of the church, it must be upon some other law that I ought to have been tried, and to some other punishment that I ought to have been subjected. But the fact is, I denied the whole. The offices of the church of England are no where reviled in the pamphlet called *Peace and Union*; nor did the promoter, when challenged by me to support his accusation, produce a single instance in which I had offended. But suppose that I had been proved guilty of this article: what ought to have been the conduct of wise judges, and benevolent men? Had they been actuated by the love of justice, they would have produced a form of recantation in this particular, and I must either have subscribed to it, or submitted to the consequence. In short, the recantation proposed to me, ought, in common equity, and plain sense, to have been founded on the several particulars articulated and proved against me. But the judge and the cabal had formed a very different project: without any regard either to the forms or the essence of justice, their sole view was to punish. This was the ground of their first resolution; not a word of the necessity was to be diffusing, though loudly at this moment, to have evidence,

that one at least of the original twenty-seven had never seen ; and I have reason to believe, that numbers of the rest had never read the book.

These are a few of the gravamina under which I have struggled, against an iniquitous and malicious prosecution. The last alone is sufficient to set aside the sentence ; it comes home to the point, that my judges in fact never proposed the alternative which the statute requires, and without which no sentence could be enforced.

The vice-chancellor is mistaken in supposing me obstinately attached to my opinions : since I shall never refuse to retract any error of which I am fairly convicted. But the reasons must be given by my opposers : I must be induced by argument, not by compulsion : and I again affirm, that no opinion of mine has been attempted to be refuted, nor any position stated which I had an opportunity of retracting.

XIV.

As the publishing or writing of a book does not come amongst the offences specified in the statute de concionibus, no instances have ever occurred of any person being punished under that law, for writing a book, but only for maintaining *viva voce*, in a publick university-exercise some point or doctrine specifically reprobated in the statute. But had not the silence of the law been sufficient, the practice of the university is decisive against my being brought to answer for any thing advanced in a printed book. Is not this then a singular and most oppressive grievance, that I should be the only person selected out by malice and ignorance to become the victim of injustice, and to suffer by an obsolete law on which no person before had been ever prosecuted, and all this too
in

an age which has been called by some persons an enlightened age? This however is an error with which I cannot be charged. I have not called it an enlightened age, nor shall I easily be induced to call it so, while such a cabal and such judges can be found to exist in it. Men, who could put into my hands such an infamous and pitiful paper as no person of letters could write, nor any man of common honesty subscribe. Yet these persons are the guardians and instructors of our youth, and expected to support by their examples, the interests of literature and the dignity of religion. Thanks to God! We have had so few as the twenty-seven capable of such conduct. The university has not lost its character for liberality and learning. I have received marks of friendship innumerable from men of the most distinguished character amongst us, such as are sufficient to redeem us in the opinion of the publick. In behalf of men like these I have always vindicated the masters of arts: they are not all favourers of these wicked and abominable proceedings, they are not all involved in the charge, they are not all bigots, persecutors, and inquisitors. There are numbers of men amongst us very different from the promoter and his cabal. I am proud to acknowledge the particular countenance, which has been shewn me by clergymen of the church of England, and by gentlemen highly respected in the law, who have expressly and repeatedly declared their abhorrence of these practices: they all consider it as a great grievance to me to be the only person ever brought to answer for an action which neither the law forbids, nor has the court authority to punish. Upon the whole, what I have hitherto said relating to the fact, may be reduced to one very short statement; there was no evidence before the court on which my judges could pronounce me guilty or even publishing the book; there was no proof of any thing criminal contained in it; nor, if there were, was that crime cognizable in the court which tried it.

XV.

After six long days however, the vice-chancellor undertakes to declare that he is satisfied of my guilt, and that the heads concur in the sentence ; but there is a very material defect in form. It does not appear from this, that the heads were all satisfied of my guilt : they concurred indeed in my sentence ; but it does not follow, that they thought I deserved it. In both points their concurrence ought to have been declared ; and the want of this declaration affects the whole.

But supposing the form to have been good, let it be considered only for a moment, how extremely disgraceful this mode of checking the freedom of investigation must be, in a place devoted to the purposes of literary improvement, how utterly inconsistent with the very end and design of our institution. If false or dangerous opinions may be any where produced, where can they be uttered with so little effect as in the midst of persons, qualified at once by ability and zeal, by reason and argument, to expose their fallacy, and to repel their danger ? Such, Sir, are the modes naturally to be expected from literary men ; and such ought to have been the mode adopted by the men who caballed against me. Let the promoter, Sir, or any of his party, write a book, containing sentiments which I feel myself interested to oppose : I here engage, that I will not make a party in the university to rouse the indignation of the vice-chancellor and the heads against him ; I will answer it by argument and reason ; and if my objections are replied to, will vindicate their strength, or acknowledge my mistake.

Having stated these grievances to you, gentlemen, I request that you would take them into your serious consideration, and on account of each separately, and all conjointly, I desire that the sentence of the vice-chancellor may be reversed, as totally unfounded in law. As a master of arts of this university, I can only be punished by the statutes of the university: as an englishman, I am subject to no punishment but by the direction of the laws of the land.

Amenable as I know myself to be to these laws, and submissive as I should have been to legal jurisdiction, legally exercised, I never will submit to any punishment in this country, not authorized either by the statutes under which I am tried, or by the laws of the land. It is on this ground that the liberty of Englishmen stands, that the proceedings against a man accused must be open, and that his trial must be by law. Even in those cases, where juries are not admitted, still he must be tried by law; and there is not a maxim in life which I would more particularly enforce than this; that law, law must be the ground and guide of all our civil conduct. And here I cannot forbear congratulating that part of my audience, who, by their situations, are exempted from any responsibility to jurisdictions like that under which I have been tried. Let them think themselves happy that they can be tried only by the known laws of their country, by courts legally established, and the verdict of a jury. Yes; I do declare, that for any offence, of whatever kind, I would rather submit my cause to any jury of twelve men, in whatever manner, or from whatever ranks impanelled, than to a set of judges, however qualified by learning or abilities, who can yet think themselves at liberty to act in the unprecedented and unwarrantable manner of the vice-chancellor's court. Much as I value the distinction of a master of arts of this university, I feel myself infinitely

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more

more happy as an englishman, that I cannot be punished but by law. I cannot be imprisoned : I cannot be banished from my native country, but by a jury : and if I am to be punished after a verdict found by a jury, still that sentence must be according to law. In my case, the sentence was not according to law ; for no recantation was proposed from the pretended charges, because they knew that I might have signed it without the least hesitation.

I cannot conclude, without again declaring that in these proceedings I have all along considered myself as acting, not merely on my own account, but in behalf of every member of the university : that we may none of us hereafter be exposed to the inconvenience and obloquy, that I have laboured under for many months ; be withdrawn from our studies to answer the cavils of malice and impertinence ; or be in danger of ruin from a factious cabal, composed, for the greater part, of men intriguing for preferment, or led away by bigotry and fanaticism,

Here Mr. Frend ended : and Sir W. Wynne asked Dr. Kipling, if he had any thing to offer in reply to Mr. Frend.

Dr. Kipling. I have heard nothing that requires any reply. I leave it all to the court.

Mr. Frend here desired that Dr. Kipling would repeat what he had said, as he had heard him very imperfectly.

Dr. Scale to Dr. Kipling. I beg you will repeat what you said just now.

Dr. Kipling. I am willing to submit the whole to the court.

Frend. The promoter, then, has nothing to observe on any of the charges.

Dr.

Dr. Kipling. No, not any thing I have nothing to say.
Frend. I believe so.

The court was then adjourned till after the congregation in the afternoon.

F O U R T H C O U R T.

Before the right honourable and right worshipful William Wynne, &c. between the hours of six and eight in the afternoon of the 29th day of June, &c.

THE judges of this court affirmed the sentence of the court below, as follows: Whereas by grace of the university dated 14th June 1793, William Wynne, knight, Dr. John Hey, Dr. Seale, Edward Christian, master of arts, and John Lane, master of arts, were appointed judges delegates in a certain cause of appeal or complaint between William Frend, master of arts, and fellow of Jesus college, in this university, party appellant, or complaining, on the one part, and Thomas Kipling, doctor in divinity, party appellee and complained of, on the other part, We the said William Wynne, John Hey, John Barlow Seale, Edward Christian, and John Lane, having taken the said cause into our serious consideration, after having examined the several proceedings had therein before the right worshipful Isaac Milner, doctor of divinity, vice-chancellor of this university, which have been transmitted to us; and having heard the argument urged by the appellant in support of his appeal, Do by this definitive sentence pronounce against the said appeal made and interposed in this behalf; and that the judge from whom the said cause is appealed, hath acted rightly, justly, and lawfully.

lawfully. And we do hereby affirm the sentence pronounced by him in the said cause.

(Signed)

William Wynne.

John Hey,

John Barlow Seale.

John Lane.

Edward Christian.

The business of the congregation in the senate house being ended, and the court assembled in the law schools, Sir William Wynne rose, and spoke to the following purpose :

I am directed by the rest of the delegates to give sentence in this case as our unanimous opinion. It was a case originally instituted in the vice-chancellor's court, in which Mr. Frend was summoned by citation to appear before the vice-chancellor and assessors, for violating the laws of the university, particularly the statute de concionibus. (Here the words of the citation were quoted.)

To this citation Mr. Frend appeared before the vice-chancellor and eight heads of colleges, and the commissary. Mr. Frend excepted to their jurisdiction as a court, and delivered in a protest. (Here the words of the protest were recited.)

This protest was taken into consideration by the vice-chancellor and his assessors; and the vice-chancellor pronounced for the jurisdiction of the court; and we are of opinion that the vice-chancellor was right. The protest goes upon the supposition, that the two courts are distinct jurisdictions; for which we find no authority either

in the statutes, or the practice of the university *. For the new regulations by queen Elizabeth, require no new court: the statute which directs that the vice-chancellor should not proceed in certain cases without the concurrence of the heads, is only a regulation of the court; it makes no alteration in the court itself. The addition of a certain number of persons authorized to sit with the vice-chancellor in certain cases, is no alteration of the court, except only in that particular expressly mentioned by the law. Something similar to this may be observed of other courts of law established in this country. The court of King's Bench has varied at times the number of its judges; but no alteration took place, either in the court itself, or the mode of its proceedings. The court of chancery, if necessary, calls in others as assessors: yet no alteration is thus made either in this court or its proceedings. In the court of admiralty, in cases of damages, assessors are called in, and pilots sit with judges and delegates. These, however, make no alteration in the nature of the court, but are added merely as advisers. So in the present case, although the heads joined with the vice-chancellor in giving sentence, they make no part of the court: nor do we see any ground for the distinction pretended between the authority of the vice-chancellor's court, and that of the vice-chancellor and heads of colleges. Mr. Frend has objected that the concurrence of the heads was necessary in the whole of the proceedings, as well as in giving sentence. The statute *de concionibus* requires no such thing: the words of the statute are not *cancellarius et professorum iussu*, but *cancellarius et huiusmodi tam iussus quam praesentorum*: these words are materially different, and the vice-chancellor has clearly, by this statute a right to proceed without the concurrence or consent of the other

* It is possible that the statutes concerning the university might be so altered, as to require the concurrence of the heads in all the proceedings, as well as in giving sentence. But this is not the case at present, and it is not probable that it will be so altered.

heads till he comes to the sentence itself. To this indeed their assent is required: but to nothing more. In whatever manner or however they may be qualified, they are authorized to give it, whether the evidence was delivered in their presence, or they were informed by the vice-chancellor, no one can dispute the sentence. This being the case, I conceive that no objection can lie against the master of Trinity's absence on some days of the trial. So long as he assented to the sentence, it was not necessary for him to be present at the whole of the proceedings: however desirous he might be to get the best information, it was not essential to the giving his assent that he should have personally attended at the trial. Mr. Frend observed further, that the jurisdiction of the vice-chancellor's court and that of the vice-chancellor and heads must necessarily be different, as there can be no appeal from the vice-chancellor and heads to the senate: now this is odd as he has himself appealed from them as vice-chancellor and heads, to the senate, and we sit here in consequence of that very appeal*. On these grounds his renunciation of their authority was over-ruled by the vice-chancellor: and the delegates think that he acted rightly.

The charges were then read, particular passages recited from the pamphlet, and the grace of 1603, and the statute de concionibus referred to. Dr. Kipling then called witnesses, which was objected to by Mr. Frend till the *secundus dies juridicus*, and he grounded his objection on a part of a grace passed 1609. But in another part of the very same grace the judge is expressly allowed a more summary mode of proceeding.

* Mr. Frend did not appeal from the vice-chancellor and heads: but from the vice-chancellor's court, proclaimed, adjourned, and dissolved, in the usual forms, after the grace of 1603 had been disposed of.

(Here Sir W. Wynne quoted the words ‘*nisi causæ sint leviores et ordinariæ in quibus potest judex statim, &c.*’) But whether the cause be levior or longior seems left entirely to the direction of the judge, and by virtue of that direction, the vice-chancellors have in all cases of late summarily proceeded *: and that the party accused might, however, have no just cause of complaint for want of time, a sufficient interval was allowed †. By the grace, indeed, it appears, that in deciding what are to be considered as leviores cause, the judge may use a discretionary power, and may proceed summarily upon them: this has been confirmed by long practice; and it does not appear that the proceedings in the vice-chancellor’s court have been carried on by examination of witnesses upon allegations, and interrogatories, and subsequent publication. Witnesses were in consequence examined. Mr. Frend objected to the evidence of Mr. Kilvington and Mr. Lloyd, on the ground of their being accusers, and concerned in the prosecution ‡. And had it appeared that these gentlemen had any interest in the cause, especially in the costs of suit, or any previous dispute or quarrel with the party, or any malice against him, these are circumstances, which, though they would not have rendered them incompetent as witnesses, yet would have made against the credit to be given them. But there appears no reason for suggesting any thing of this kind against them. Their publick resentment of the pamphlet affords no ground for objection; their indignation appears to have been, not against the person, but

* Levior, or longior—undulous contrariety, taking the very distinction of the word.

† Mr. Frend did not except to it as an indulgence, but a legal necessity.

‡ The objections to Kilvington and Lloyd, were not that they were concerned in the prosecution, but that they were

his publication: they were therefore strictly allowable as witnesses; and the evidence they gave seems impartial and clear. The same objections were suggested to have been made against other witnesses*, but these not appearing on the minutes of the court, I call them barely suggested no evidence appeared of their having been made, and therefore no weight was allowed them †.

Mr. Frend's next objection was, that the questions and answers which were taken down by the registry, ought to have been kept in the court, but that they were taken out of court, and put into the possession of the promoter. As the fact has not been controverted, we must consider it as admitted. At some period, the proceedings must go into the hands of all the parties: Mr. Frend must have had copies given to him, at what time I do not know ‡. But the objection is taken up on that radical maxim, that no evidence shall be communicated before publication §. If this had been a close examination, then indeed it would have been a fatal proceeding ||. But this was an examination in open court, taken down in the most deliberate manner, by the proper officer, and might also have been taken down by the promoter, or any of his friends. It was therefore indifferent in what manner the promoter

* The same objections were not made to all the others.

† But evidence was offered on both, and rejected; though the extraordinary oath of the registry was taken.

‡ There was no objection to copies of evidence being sent to all the parties; but to the original being given to the promoter before any copy had at all been taken.

§ It was not on this maxim that the protest was grounded, but on the first noted in the case.

|| The case was not concerned with close examination, but with publication, which can be before a jury, and is therefore a most gross and palpable error.

came by it ; whether the originals came into his hands ; if those originals underwent no alteration there, and that they did not, has been sworn to by the registry. But Mr. Frend objected also to the mode of taking the depositions at various times. It would, to be sure, have been more regular, if the deposition of each witness had been taken all at once : but it is no unusual thing in courts of law, by leave of the court, to have up evidence at different times. I remember one instance, in a particular trial, where a witness having said what he had not meant, the cause was rescinded, to take the deposition of that witness again. Mr. Frend objected next, that several leading questions had been asked, but the instances did not appear to us to be of such a nature as to justify the complaint. One witness was called and reminded what he had said before. (Here Bowtell senior's evidence was referred to * You told the court, &c.†). I do not apprehend that to be a leading question ‡. An examination conducted in a court familiarized to legal proceedings, might perhaps have been carried on in rather a more proper manner in point of regularity : but to this I make one general reply : the inexperience of the parties who conducted the proceedings, and of the court in all manner were carried on. It would be a very unhappy thing, if the members of this university were to entertain notions of this nature. If it appears that in consequence they have conducted themselves with caution, and if every man in their knowledge, little regard ought to be had to objections of informality and irregularity ; and, I mention, I never took deposition, or was a witness in any important, or what is supposed to be so, trial, directed to

* I have not been able to find any instance of such evidence, where the witness has been asked to repeat what he has said before.

† The case is not in the *Reports*, but in *Meases's Pleader*, 2 Ed. 2. 100.

support the charge, than in the present case. But there is yet one objection, the vice-chancellor's rejection of an appeal to absolution in bar of sentence. I think it very evident, that the occasion and the offence considered, the vice-chancellor could do no otherwise than reject such an appeal. There are many of the old statutes, by which excommunication was usually inflicted on many offences not now thought deserving so severe a censure. To avoid hurting tender consciences in those days, absolution was pronounced at the end of every term: but that this provision should be construed to extend to offences stated to be contrary to the statutes, can never be allowed*: the protest, therefore, being grounded only on very ancient usage, was very properly dismissed, and the vice-chancellor acted perfectly right,

Mr. Frend has this day urged as a matter of the greatest consequence, that the whole cause originated in maliciousness †; and he spoke of the promoter, and of the persons concerned with him, in terms which nothing could excuse but his unhappy situation: but I trust that on reflection he will be sincerely sorry for the expressions he has made use of. It is sufficient for us to say the charge is not relevant at all; courts do not enquire into motives of a prosecution: it is impossible for them to be ascertained; and if it could be done, it could not weigh on the guilt, or the innocence of the party accused; these

* Offences contrary to statute are expressly included in the absolution; and enormous offences are forgiven, since the culprit is released *Deo et ecclesie*.

† A charge of malice is material in an appeal on account of relevancy; and what could be a greater one than that the judge and the jury should be misled by the false and malicious Dr. Wyndham to answer Mr. Frend's proofs of malice. What is the next step to be taken?

must depend on the real merits of the cause, and the facts actually proved in the course of evidence.

In the first place, then, it appears, from the name of Mr. Frend in the title page, that he was the authour of the pamphlet: this indeed goes but a little way; and though the presumption, which it affords, remains till it be removed, yet, for legal proof, it must be allowed that great confirmation is wanted. In the evidence of Hodson, such circumstances occur as leave little room to doubt; yet even this evidence is slight, compared with what appeared on subsequent enquiry; the evidence of Bowtell, and the correspondence with Mr. Watson. In these notes, Mr. Frend does over and over again speak of this pamphlet and the appendix as his: indeed he seems to have exerted more activity than is usual in a common publication*. The only question now remaining is whether there be any thing in the pamphlet which comes under the statute de concionibus†. The modes of uttering expressly prohibited in this statute are, preaching, common-placing, and publick lectures; but these are not all: the statute evidently goes farther, and includes much more in the expression, ‘aut aliter publice.’ The only question is, whether the printing and publishing of a pamphlet does come within this clause? Mr. Frend contended, that ‘aliter publice’ must refer only to some mode of publication, of the same kind with those before particularly described, and cannot apply to any doctrine, or position, not maintained and supported viva voce. But I do not apprehend that this could be allowed, in the strictest way of interpretation; and we must consider the

spirit of the statute, and the mischief which it was intended to prevent*. It is certain, that publishing by printing is more strong, more extensive, than by any viva voce declaration; in these circumstances, the pamphlet proved is such as opposes what the statute forbids to be opposed, and is therefore comprehended in it. Of the particular parts and passages in this pamphlet, I shall take notice of only three.

1. In page thirty-nine alone, there is language sufficient to justify the sentence we are about to give†. ‘Hence ecclesiastical courts, ecclesiastical ranks and titles, ecclesiastical dress, all repugnant to the spirit of christianity.’

It has been stated by Mr. Frend, that this passage was not fairly quoted; and he denies that any such meaning, as the promoter has given to it, can be inferred from the original; but we think the meaning is clearly determined from the context: ‘the christian world,’ says the author, in the same page, &c. to ‘concerns.’ Hence—Now, I think, in all plain construction, this clearly implies the sense given to it by the promoter; and if so, how it can be said that they are not against ‘*aliquem statum et gradum*,’ I do not know: at the close of the passage they are all pronounced ‘repugnant to the spirit of christianity; and the writer of such a passage must be proved guilty of the charge.

* Judges should be less fallible than Dr. Wynne and his brethren, to be allowed to decide on the spirit of a law.

† The delegates find three passages: but how do they know, that these were the passages obnoxious to the statute, in the eyes of the vice-chancellor and his judges? What right had the delegates to look out the obnoxious passages? They could be concerned only with those which Mr. P. was ordered to extract: but the passages were not pointed out in the proper court.

2. It goes on, ‘ A man, if a priest or minister enters, is not master of his own house ; he must not thank god for the blessings of providence at his own table ; he cannot pledge his faith to a lovely woman without the interference of the priest ; his offspring must be sprinkled by sacred hands ; and at death he is not committed to his long home without another spiritual incantation.’ Now, how words could be pronounced more injurious to the clergy of this kingdom than these, I cannot see. The laity are called brute beasts, for tamely submitting to this usurpation ; and therefore I cannot but think that the writer must mean to oppose the degrees and ranks established by the church of England.

3. The latter end of the page speaks of the ‘ sacred offices of marriage, baptism, and burial, as incantations : we are therefore clearly of opinion, that the vice-chancellor was well founded in calling upon the party to recant. It has been alledged by Mr. Friend, that he was not called upon to recant, in virtue of there being no particular errors or passages specified in the form prescribed ; but in fact he was called upon to recant—the form is before the court, and is as follows. (Here the form of recantation was read.)

Now Mr. Friend’s assertion rests on this : that the recantation proposed, did not contain any particular specification ; but we are of opinion, that, if any passages whatever are to be found in the pamphlet, which go against the statute, the requiring of him to retract from the book which contain such passages, is strictly proper.

* Mr. Friend’s sacred offices imply that he did not call it a ceremony.

† I have only one objection to make, and that is, whether Mr. Friend’s recantation is not a recantation, or whether it is not a recantation, or whether it is not a recantation, or whether it is not a recantation.

Now, I have pointed out three passages, in which the pamphlet does expressly controvert the provisions in the statute. The form, therefore, was proper ; besides, by that statute, the party is obliged to conform in whatever manner the vice-chancellor shall direct ‘ eo modo quo illi prescribitur.’ The party had no pretence to dictate the manner in which he was to make his recantation, but was obliged by the statute to conform to that mode which the vice-chancellor should prescribe. This mode was legal and proper ; and we do therefore agree, that in this, and in every part of the proceedings, the vice-chancellor did right, and we do therefore affirm the sentence.

Mr. Frenn now demanded a copy of the sentence ; and the court was dissolved : but before the delegates left the schools, he rose, and said : I desire it may be understood, that my present intention is to appeal from this unjust sentence, to the court of king’s bench, where I hope every englishman will meet with justice.

A P P E N D I X.

Nº I.

De causis forensibus. Cap. 48.

Stat. reg. Eliz. An. 12mo. ed.

OMNES causæ et lites quæ ad universitatis notionem pertinent tam procancellarii quam commissarii judicio subjiciantur nisi procuratores vel taxatores academix aut eorum aliquis vel magister artium aut qui supra illum fuerit alter litigantium sit: tunc enim procancellarii solius erit jurisdictio nisi in nundinis Sturbrigienfis et iis quæ ad festum sancti Johannis baptistæ apud Barnwell tenentur. Finem autem accipient infra triduum si fieri potest omni juris solennitate sumnota. A sententia commissarii ad procancellarium appellabitur infra viginti quatuor horas post latam sententiam. A procancellario autem siue lis coram eo cœpta sit siue per appellationem ad eum devoluta ad universitatem provocatio fiet infra biduum a tempore latæ sententiæ et non post suamque appellationem intimabit appellans alteri procuratorum infra triduum latæ sententiæ. Ille vero statim nomine academix iudici a quo inhibebit ne quid pendente appellatione attentare vel innovare presumat prius tamen duobus solidis honorarii loco ab appellante acceptis nec non viginti solidis apud eum depositis appellanti restituendis si iustum fore hanc causam probetur vel in usum academix convertere. Alio si tamen appellare convincatur aut si post

datos iudices a prosecutione cessaverit vel culpa sua cognitio differatur. Causæ appellationum ad universitatem ultra decem dies si fieri potest post datos iudices non protrahantur nec secunda provocatio omnino admittatur. Iudices delegati tres ad minimum nec plures quam quinque pro qualitate causæ in omni appellatione dabuntur et sententiæ majoris partis illorum standum erit. Potestas autem nominandi iudices sit penes quinque illos viros qui pro capite illius anni constituti sunt et duos procuratores. Et qui a majori parte istorum nominati fuerint ad regentes et non-regentes deferentur suffragiis suis eligendi si placent eis alioqui mutatis uno vel altero alii eorum loco per dictos septemviros surrogati proponentur eligendi. Et si hi quoque displicent similiter tertio fiet. Quod si nec tertio loco positi eligantur licebit dictis septemviris aut eorum majori parti pro illa vice tantum delegatos iudices eligere et dare. Et si major pars septemvirorum vel in nominandis iudicibus vel in eligendis illis (quando electio ad eos devolvitur) non convenient tunc plures numero prævalebunt licet majorem partem vel æquam habita ratione totius numeri non efficiant.

Nº II.

Stat. De concionibus. Cap. 45.

NULLUS concionator sit vel aliquam concionem pro gradu suo habeat nisi ad minimum diaconus sit. Octavo maii ad Henrici septimi commendationem sacra concio sit quam regius in theologia professor faciet. Pridie unius cujusque termini concio latina hora nona antemeridiana in ecclesia beatæ Mariæ habeatur. Primo termino anni concionabitur regius professor in theologia: secundo professor dominæ Magaretæ: tertio concionator academix. Unoquoque die dominico de anno in annum conciones in academix templo fiant. Ordinem eundem collegi-

orum in concionibus conservabunt quem in disputationibus præscripsimus incipiendo a senioribus qui concionatores sunt in unaquaque combinatione et sic progrediendo ad juniorem. Qui cursum suum concionando omiserit viginti solidis mulctabitur.

Collegia pro singulis concionibus solvent bedellis quatuor denarios nisi quis pro gradu concionatur. Concionatores autem in concione sua utentur caputio usitato non-regentis sub pœna sex solidorum et octo denariorum quoties deliquerint.

The latter part of this statute is inserted in p. 169.

Nº III.

Grace passed on June 9. 1603. specified in the articles.

PLACET vobis ut quicumque doctrinam vel disciplinam ecclesiæ Anglicanæ vel ejus partem aliquam legibus publicis stabilitam scriptis vel dictis vel quocunque modo in academia Cantabrigiensi publice oppugnaverit ab omni gradu suscipiendo excludatur et a suscepto suspendatur ipso facto.

Nº IV.

Grace passed in the year 1609, to regulate judicial proceedings.

CUM statuti academice nostræ cautum sit ut omnes causæ in aliqua curia universitatis motæ omni juris solemnitate semota et sola facti veritate inspecta debite terminentur intra triduum (si commodè fieri possit) quæ quidem statuta (inter alia) quilibet advocatus procurator et alii omnes sese ad postulandum gerentes in curiis prædictis virtute juramenti strictè tenentur observare quibus

tamen non obstantibus jampridem omnes pene lites coram procancellario et commissario universitatis nostræ inceptæ potius in triennium quam triduum prorogantur in manifestam privilegiorum et statutorum nostrorum violationem honoris et jurisdictionis academix scandalum et opprobrium et litigantium vexationem ac dispendium

Placet igitur vobis ut subsequens ordo in omnibus et singulis causis posthac in curiis universitatis motis seu movendis striçte observetur viz.

Imprimis arrestetur reus si possit apprehendi si non possit fiat citatio peremptorie viis et modis. Reo capto seu bonis suis ex primo decreto salva custodia custodiatur donec fidejubeat coram academix registrario vel ejus deputato se compariturum proximo die juridico ex tunc sequenti et sic postea quolibet &c. Reo autem non comparente statim luant fidejussores sine favore. Insuper juxta tenorem statutorum academix nostræ principales personæ factum ipsum per se proponant videlicet actor per se suam actionem et reus suam defensionem nec defensores vel procuratores admittantur pro eisdem nisi adversa veritas vel alia legitima causa per dominum procancellarium approbanda sint detenti quo minus in judicio suam præsentiam poterunt exhibere de quibus in principio coram domino procancellario vel commissario vel delegatis judicibus fidem faciat juramento: quo præstito et causa utrinque declarata et non antea admittantur. His omnibus sic ut præcipitur factis et observatis primo die juridico detur materia five fiat facti declaratio: fiat etiam litis contestatio et præstet reus juramentum de fideliter respondendo et moneatur ad subeundum examen infra triduum (nisi causæ sint leviores et ordinariæ in quibus potest judex statim tam partes principales quam testes si quos præsentis habeat publice interrogare et examinare de veritate facti et omni solennitate prorsus semota causam statim finaliter determinare) sed utcumque triduo

elapso

elapso vel antea (si fieri possit) habeat actor copiam respondendi ut videat an opus habeat ulteriori probatione et sciat quid ultra ei faciendum habeat etiam ad probandum in proximum et post triduum exeat compellorium pro testibus.

Secundo die juridico veniat actor paratus ad probandum et testes suos producat si quos habeat. Testes iudex in levioribus et ordinariis causis potest ut supra publice interrogare de veritate materiæ sive allegationis et statim causam finaliter determinare. Sin causa longior sit et altiore examinationem requirat habeat reus biduum pro interrogatoriis et intra principium tertii diei et diem proximum juridicum examinentur testes tam super materia originali actoris quam super interrogatoriis per reum datis.

Tertio die juridico publicentur dicta testium et assignentur ad sententiam in proximum et proximo feratur sententia nisi reus velit excipere: si velit detur reo proximus ad excipiendum: quo die adveniente respondeat actor ut supra reus actori et præstet juramentum et subeat examen ut supra et reo detur terminus ad probandum in proximum et fiat ut supra actori.

Quarto die producantur testes rei si quos habeat qui juramento suscepto moneantur examinari citra proximum reliquaque fiant per iudicem vel in publica testium examinatione vel in concedendis alteri interrogatoriis quæ secundo die juridico fiebant de testibus actoris.

Quinto die publicentur dicta testium rei assignetur ad sententiam proximo et ad informandum interim.

Sexto die feratur sententia.

Septimo et ultimo nisi interim ab altera parte appellatum fuerit mandetur sententia executioni.

Placet etiam vobis ut quilibet advocatus procurator five causarum defensor necnon quilibet officarius curiarum academix nostræ virtute juramenti sui corporalis per eorum quemlibet præstandi præmissa omnia et singula stricte teneantur observare priusquam in ullis causis in posterum in dictis curiis movendis admittantur et ut iste ordo et hæc concessio vestra pro statuto habeatur et in libris procuratorum infra decem dies jam proxime sequentes inscribatur.

Nº V.

Bishop White's interpretation of the words *De majore parte sociorum*, in the statutes of Jesus college.

DE majore parte sociorum quomodo accipienda sit, tam in dicto statuto de electione officiariorum, cap. 12. quam etiam in statuto de electione sociorum et forma ejusdem cap. 5 et denique in statuto de scholaribus in collegio exhibendis cap. 9, de quibus omnibus idem dubium movetur, ita judicamus. Nimirum cum in statutis vestris observemus requiri alias universaliter majorem partem omnium sociorum, ut in quibusdam rebus et negotiis arduis cap. 3. 25, 26, 27, 28. memoratis, alias simpliciter et indefinite majorem partem sociorum, non adjecta voce omnium, ut in electionibus sociorum, scholarium, et officiariorum dictis capitibus 5. 9. et 12. cumque præterea unicuique dictarum electionum suus certus terminus ultra quem differri non debeat in iisdem statutis limitetur, cum denique in dicto statuto, de electione sociorum, expresse et signanter dicatur, magister convocabit omnes socios ejusdem collegii tum in academia præsentem, absentium nulla habita ratione aut mentione facta, eademque esse videatur reliquorum duorum statutorum ratio: his igitur omnibus diligenter collatis et perpensis, tam verba illa dicti capitis quinti, de electione sociorum et forma ejusdem, illi electi censeantur et pro electis reputentur, in quos
magister

magister et in ejus absentia præsidens sive locum tenens et major pars sociorum consenserint, quam illa capitis noni, dictos vero scholares per magistrum et majorem partem sociorum toties eligi et admitti volumus, et denique illa capitis duodecimi, illi pro electis officiariis habeantur in quos magister vel in ejus absentia præsidens et major pars sociorum expresse consenserint, ita interpretamur, ut intelligantur, et intelligi debeant, non de majore parte numeri sociorum pro tempore existentium, sed tantum de majore parte sociorum tum in academia præsentium quando electionem fieri debere contigerit.

Provisto semper, quod in omnibus dictis electionibus requiratur præsentia majoris partis totius numeri sociorum pro tempore existentium. Provisto tamen insuper quod si quis sociorum legitime monitus sive vocatus ad capitulum venire noluerit, aut neglexerit, vel cum semel præfens fuerit in capitulo sine venia discesserit, habeatur pro illa vice et quoad res explicandas in illo capitulo tanquam nullus de numero existentium.

The above is the interpretation referred to in pages xxvii. and xxviii.

Nº VI.

Mr. Kilvington's character vindicated by the twenty-seven.

The following paper was drawn up by the twenty-seven, by way of rescuing Mr. Kilvington from the just odium testified against him for his very improper conduct.

Cambridge, June 1st, 1793.

WE, the undersigned, express our detestation of the scandalous and unfounded imputations, which were attempted

tempted to be thrown upon the characters of Mr. Lloyd, and Mr. Kilvington, at the late trial of Mr. Frend.

T. Kipling	R. Boon
J. Jowett	J. Dudley
R. Glynn C.	W. Pugh
W. L. Manfel	C. Simeon
J. Mainwaring	Antho. Mainwaring
R. T. Belward	Ed. Wigley
Geo. Whitmore	W. Millers
W. Walford	Jos. Watfon
J. Oldershaw	Tho. Castley
W. Wade	John King
W. Mathew	Philip Douglas
J. Smith	E. Edwards
J. Wood	J. Bradshaw
W. Wilfon	W. Walker
H. Greene	J. Fawcett
R. Ramfden	R. Tillard
A. Frampton	W. Easton
E. Outram	Henry Jowett

To the above Mr. Farish added his own manifesto, in the following terms :

THE testimony given by Mr. Kilvington, during the trial of Mr. Frend, having been openly contradicted by the latter, and an idea having prevailed that certain letters written by Mr. Kilvington to Mr. Frend, contained a proof that the testimony was untrue ; I think myself called upon to declare publicly, in vindication of Mr. Kilvington's character, that, since the trial in the vice-chancellor's court, Mr. Frend, on application made to him by Mr. Kilvington's desire, shewed me those letters, and that there was nothing in them which appeared to me in the smallest degree to invalidate that testimony. The substance of the letters was an application for college testimonials,

testimonials, and they contained general expressions of gratitude to Mr. Friend for favours received, which, according to Mr. Friend's explanation, consisted in attentions shewn to Mr. Kilvington, when at Jesus college, and the supplying him occasionally with books from the library.

W. FARISH,

Senior Proctor of the University.

Magd. Coll. July 1, 1793.

With respect to the main point, the falsehood of Mr. Kilvington, in attributing any civilities shewn to him to a desire of proselyting him, these manifestos are by no means satisfactory. The impartial reader will turn to the letters, p. 107. and from them form a truer judgment, than from the ipse dixit of any one of the cabal. At the same time he must give the twenty-seven credit for standing by each other to the last, and proving, by their own signatures, that 'they are all, all honourable men.'

The insidious conduct of Mr. Farish, deserves severe reprehension: he called on Mr. Friend as an old acquaintance, and the letters were, at his request, shewn to him, without any suspicion of his being sent by the twenty-seven on such a message. A free conversation then took place between them, in which Mr. Friend observed that the conduct of Mr. Kilvington was as ridiculous, as it was base. He had, on coming to college, brought letters of introduction from a common friend, from which he became intitled to the usual civilities, founded on such occasions. Mr. Friend recollects, particularly, the manner in which this was stated. You know, said he, to Mr. Farish, that as tutors you take notice of men on two accounts. Those, who have abilities and industry, you take notice of for their own sakes, and are happy in shewing them particular attention:

others, not at all distinguished from the common maſs, come frequently with recommendations from common friends, for whoſe ſakes they are entitled to a degree of attention. To the former claſs, Mr. Kilvington had no pretenſions ; on the latter account, he had a right to expect the notice ſhewn to him, which did not however equal the attention paid to ſeveral of his fellow ſtudents, from whom I have received a very different return, and whom I am happy to ſee diſtinguiſhing themſelves in more laudable purſuits.

Nº. VII.

Petition for the removal of ſubſcription to articles and confeſſions of faith.

To the honourable the commons of Great Britain in parliament aſſembled.

The humble petition of certain of the clergy of the church of England, and of certain of the two profeſſions of civil law and phyſick, and others whoſe names are hereunto ſubſcribed,

Sheweth,

That your petitioners apprehend themſelves to have certain rights and privileges which they hold of God only, and which are ſubject to his authority alone. That of this kind is the free exerciſe of their own reaſon and judgement, whereby they have been brought to and confirmed in the belief of the chriſtian religion, as it is contained in the holy ſcriptures ; that they eſteem it a great bleſſing to live under a conſtitution, which in its original principles enſures to them the full and free profeſſion of their faith, having aſſerted the authority and ſufficiency

sufficiency of holy scriptures in all things necessary to
 salvation; so that whatsoever is not read therein, nor
 may be proved thereby, is not to be required of any
 man that it should be believed as an article of faith
 or be thought requisite or necessary to salvation. That
 your petitioners do conceive that they have a natural
 right, and are also warranted by those original princi-
 ples of the reformation from popery, on which the
 church of England is constituted, to judge in searching
 the scriptures, each man for himself, what may or may
 not be proved thereby. That they find themselves,
 however, in a great measure precluded the enjoyment
 of this invaluable privilege by the laws relating to sub-
 scription; whereby your petitioners are required to
 acknowledge certain articles and confessions of faith and
 doctrine, drawn up by fallible men to be all and every
 of them agreeable to the said scriptures. Your petition-
 ers therefore pray, that they may be relieved from such
 an imposition upon their judgement, and be restored to
 their undoubted rights as protestants of interpreting
 scripture for themselves, without being bound by any
 human explications thereof, or required to acknowledge
 by subscription or declaration the truth of any formula-
 ry of religious faith and doctrine whatsoever beside holy
 scripture itself.

That your petitioners not only are themselves ag-
 grieved by subscription as now required, which they
 cannot but consider as encroachment on their right,
 competent to them both as men and as members of a
 protestant establishment, but with much grief and
 concern apprehend it to be a great hindrance to the
 spreading of Christ's true religion as it tends to pre-
 clude, or at least to discourage, rather than to give scope to the true
 trade of scripture, to dissolve controversy and cause
 confusion between fellow protestants: and to give an
 handle to the papists, to represent the protestants as
 inconsistent.

by representing them, when they observe their diversity of opinion touching those very articles which were agreed upon for the sake of avoiding the diversities of opinion, as guilty of prevarication, and of accommodating their faith to lucrative views or political considerations: as it affords to papists and others disaffected to our religious establishments occasion to reflect upon it as inconsistently framed, admitting and authorising doubtful and precarious doctrines, at the same time that holy scripture alone is acknowledged to be certain and sufficient for salvation: as it tends, and the evil daily encreases, unhappily to divide the clergy of the establishment themselves, subjecting one part thereof, who assert but their protestant privilege to question every human doctrine and bring it to the test of scripture, to be reviled as well from the pulpit as the press, by another part, who seem to judge the articles they have subscribed to be of equal authority with the holy scripture itself: and lastly, as it occasions scruples and embarrassments of conscience to thoughtful and worthy persons in regard to entrance into the ministry or chearful continuance in the exercise of it.

That the clerical part of your petitioners, upon whom it is peculiarly incumbent, and who are immediately appointed by the state to maintain and defend the truth as it is in Jesus, do find themselves under a great restraint in their endeavours herein, by being obliged to join issue with the adversaries of revelation in supposing the one true sense of scripture to be expressed in the present established system of faith, or else to incur the reproach of having departed from their subscriptions, the suspicion of insincerity, and the repute of being ill-affected to the church; whereby their comfort and usefulness among their respective flocks, as well as their success against the adversaries of our common christianity are greatly obstructed.

That

That such of your petitioners, as have been educated with a view to the several professions of civil law and physick, cannot but think it a great hardship to be obliged, as are all in one of the universities even at their first admission or matriculation, and at age so immature for disquisitions and decisions of such moment, to subscribe their unfeigned assent to a variety of theological propositions, concerning which their private opinions can be of no consequence to the publick, in order to entitle them to academical degrees in those faculties; more especially as the course of their studies, and attention to their practice respectively afford them neither the means nor the leisure to examine whether and how far such propositions do agree with the word of God.

That certain of your petitioners have reason to lament not only their own but the too probable misfortune of their sons, who, at an age before the habit of reflection can be formed, or their judgement matured, must, in the present mode of subscription remains, be irrecoverably bound down in points of the highest consequence to the tenets of ages less informed than their own.

That, whereas the first of the three articles, enjoined by the thirty-sixth canon of the church of England to be subscribed, contains a recognition of his majesty's supremacy in all causes ecclesiastical and civil, your petitioners humbly presume that every security proposed by subscription to the said article is fully and effectually provided for by the oaths of allegiance and supremacy, prescribed to be taken by every deacon and priest at their ordination, and by every graduate in both universities. Your petitioners, nevertheless, are ready and willing to give any further testimony, which may be thought expedient, of their affection for his majesty's person and government, or their attachment and devoted submission to church and state, or of their abhorrence of any doctrine

tian spirit of popery, of all those maxims of the church of Rome which tend to enslave the consciences or to undermine the civil or religious liberty of a free protestant people.

Your petitioners in consideration of the premises do now humbly supplicate this honourable house, in hope of being relieved from an obligation so incongruous with the right of private judgement, so pregnant with danger to true religion, and so productive of distress to many pious and conscientious men and useful subjects of the state; and in that hope look up for redress and humbly submit their cause under God to the wisdom and justice of a british parliament and the piety of a protestant king.

And your petitioners shall ever pray, &c.

This petition, signed by about 250 persons, was presented to the house of commons on Thursday the 6th of February, 1772, by Sir William Meredith, and, after nine hours debate, was rejected on a division by 219 against 73.

I N D E X.

A

- A**BSOLUTION used in the university, p. 177.
Acta curiæ, p. 1. 14. 33. 64. 80. 84. 168. 172.
———of the delegates, p. 190. 207. 212. 237.
Appeal to the visitor of Jesus college, p. xxi.
———to the university, p. 122.
Articles of accusation against Mr. Frend, p. 2.

C

- Canon of the church, on dress, p. 127.
Citation of Mr. Frend into the vice-chancellor's court,
p. 3.
———into the court of delegates, p. 192.

D

- Delegates, conduct prescribed to them in the bedell's
books, p. 200.

E

- Ely, bishop of, letter to Mr. Frend, p. xxxii.
Evidence of Alger, Harvey, p. 16. 29. 74.
———Bowtell, John, sen. p. 29. 40. 70. 73.
———Bowtell, John, jun. p. 36. 45. 71.
———Dickens, C. Rev. LL. D. p. 31.
———Everiden, Elizabeth, p. 44.
———Hodson, Francis, p. 65.
———Kilvington, L. Rev. p. 51. 57. 60. 68.
———Lile, Philip, p. 20. 22. 22.
———Lloyd, T. Rev. p. 23.

I N D E X

- Evidence of Lunn, W. H. p. 42.
 ———Mathew, William, LL. B. p. 77.
 ———Merrill, J. p. 45. 49. 69.
 ———Newton, T. Rev. p. 55. 57. 60. 69.
 ———Plampin, J. Rev. p. 54. 57. 60. 69. 78.
 ———Smith, John, p. 75.
 ———Wagstaff, T. p. 47.
 ———Watson, Jos. Rev. p. 50. 56. 58. 60.

F

- Farish, W. Rev. supports Mr. Kilvington. p. 256.
 Friend, William, letters to Dr. Kipling, and the vice-chancellor, p. x. xi.
 ———to the editor of the Morning Chronicle, p. xii.
 ———to the bishop of Ely, p. xxi. xxix. xxx. xxxi. xxxii.
 ———appeal to the visitor of Jesus college, p. xxi.
 ———reply to the answer of the master and certain fellows of Jesus college, p. xxxiii.
 ———protest on appearing first in the vice-chancellor's court, p. 4.
 ———demand to see the resolutions of the twenty-seven, p. 23.
 ———letters to Mr. Watson, p. 55. 57. 60.
 ———defence in the vice-chancellor's court, p. 85.
 ———paper delivered to the vice-chancellor on the proposed recantation, p. 174.
 ———plea in bar of sentence, p. 177.
 ———appeal to the university, p. 188.
 ———citation to appear before the delegates, p. 192.
 ———protest in the court of delegates, p. 215.
 ———speech in the same court, p. 216.

G

- Grace for the appointment of delegates, p. 190.
 ———de modo et forma petendi gratias, p. 196.

Grac

I N D E X

Grace quomodo scrutatores tenentur petere gratias,
p. 197.

———de gratiis petendis, p. 197.

———quod jurejurando astringantur procuratores et
scrutatores deputati, p. 198.

———of 1603, on impugning the church, p. 251.

———of 1609, to regulate judicial proceedings, p. 251.

H

Harris's, Dr. opinion on a statute of Jesus college, p. xv.

J

Jesus college, resolutions of certain fellows of, p. x.
xviii. xx. xli.

———answer of the master and five fellows of, to Mr.
Frend's appeal, p. xxiv.

K

Kilvington, E. Rev. falsehood of his testimony, p. 105.
106.

———letters to Mr. Frend, p. 107.

———testimonial to his character by the twenty-se-
ven, p. 255.

Kipling, Dr. Rev. letters to Mr. Frend, p. xi.

———remarks on the charges, p. 75.

———speech in the vice-chancellor's court, p. 80.

———reply to Mr. Frend's defence in that court,
p. 162.

———speech in the court of delegates, p. 236. 237.

M

Marsh, H. Rev. address the vice-chancellor, p. 66.

———letter to Dr. Kipling, p. 166.

Mainwaring, J. Rev. anecdote of, p. 117.

Petition

I N D E X

P

- Petition of the clergy in 1772, p. 258.
 Pearce's, Dr. Rev. letter to Mr. Frend, p. xiv.
 Protest of Mr. Frend, p. 4. 115. 215.
 ———of Mr. Tyrwhitt, p. 194.

Q

- Questions to the promoter on Charke's case, p. 159.

R

- Recantation proposed to Mr. Frend, 169.
 Resolutions of certain fellows of Jesus college, p. x.
 xviii. xx. xli.
 ———of the twenty-seven, p. 34. 35. 255.
 ———of the vice-chancellor and heads at Queen's
 college, p. 170.

S

- Sentence of the vice-chancellor's court, p. 173.
 ———of the visiter of Jesus college, p. xli.
 ———of the court of delegates, p. 237.
 Speech of the promoter, p. 80. 162.
 ———of Mr. Frend, p. 85. 214.
 ———of the vice-chancellor, 178.
 ———of Sir W. Wynne, p. 238.
 Statute of Queen Elizabeth, de causis forensibus, p. 249.
 ———de concionibus, p. 250.
 ———of Jesus college, de majore parte sociorum,
 p. 254.

T

- Tyrwhitt. R. Rev. protest against the grace for appoint-
 ing delegates, p. 194.
 ———vindication of his protest, p. 195—199.

Vice-

I N D E X

V

Vice-chancellor's letter to Mr. Frend, p. xii.

———speech on the conclusion of the trial, p. 178.

W

Watson, Jos. Rev. letters to Mr. Frend, p. 56. 59. 61.

Wynne's, Sir W. speech in the court of delegates, p. 238.

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THE ASSOCIATED BODIES
OF
REPUBLICANS
AND
ANTI-REPUBLICANS.

BY WILLIAM FREND, M.A.
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THE SECOND EDITION.

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S E Q U E L,

Éc. Éc.

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S E Q U E L

TO THE

ACCOUNT OF THE PROCEEDINGS

IN THE

UNIVERSITY OF CAMBRIDGE,

AGAINST THE

AUTHOUR OF A PAMPHLET,

ENTITLED

PEACE AND UNION;

CONTAINING

THE APPLICATION TO THE COURT OF KING'S BENCH,

A REVIEW OF SIMILAR CASES IN THE UNIVERSITY,

AND REFLECTIONS ON THE IMPOLICY OF RELIGIOUS PERSECUTION, AND THE IMPORTANCE OF FREE ENQUIRY.

By W. F R E N D,

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LONDON:

PRINTED FOR THE AUTHOR;

AND SOLD BY C. G. AND J. ROBINSONS, LONDON: AND

B. ILWITZ, W. H. LUNN, AND W. PAGE, CAMBRIDGE.

1795.

[Price Two Shillings and Sixpence.]

P R E F A C E.

A PRINCIPLE of duty alone impells me to obtrude myself farther on the publick notice, by giving this Sequel to the Proceedings, which immediately followed the publication of my pamphlet entitled Peace and Union: and I am fully aware of the complaints that will be made upon this obtrusion by every enemy to publick discussion and free enquiry. It will be urged, that mine is not a new case; that in every age they who have uttered sentiments disagreeable to the majority of their countrymen have suffered from their resentment; that the feelings of an individual are of little or no consequence to the publick at large; that I have by my own fault been exposed to trouble; that if I had been content to keep my sentiments to myself, and to go on in the usual train with others, I might have been a sharer in their good fortune; and that men, as long as they are in possession of power, and find their interest involved in the system which any one presumes to condemn, will not be in the least affected by arguments derived only from reason and justice. Yet these insinuations, which have been frequently made in my hearing, seem to me to be of little weight. If I cannot convince the majority of the injustice of its conduct, I am

still bound to shew to those persons, who have been interested in my cause, that I did not act upon slight grounds in determining, that it should be investigated in a superior court of judicature; and though I have not succeeded in my attempt, there will, I trust, be found in the following pages, sufficient proofs of the points intended to be established; namely, that mine is the only cause of the same nature, which was ever tried in a criminal court; and that the whole course of the proceedings was not only contrary to the letter and spirit of the law, but to every former precedent.

It may be asked, indeed, what injury has been done to me, by trying this cause in a criminal court, since the same persons decided upon the question as would have acted at a private meeting? I answer, that to drag a person into a criminal court, to which his conduct has not made him amenable, to expose him to publick view, and it might have been to publick resentment, when the question should have been agitated in private, are real injuries, which are aggravated by the consideration, that the accusers and the judge had previously caballed together to overthrow the object of their persecution. But the cabal was apprehensive that its end could not otherwise have been answered. They were afraid, and probably with reason, that I should have laughed at their attempt to investigate my publications at a private meeting; they conceived, that the only way to obtain their end was to form such an accusation, as might give ground for a summons into a criminal court; and having thus secured an attendance, they relied for the rest on the character of the judge and his associates. Thus, perhaps, there never was a more flagitious breach of publick decorum than the accusation of an individual by a cabal, under the pretence of a law, which was not in existence upon any legal record, had never been acted upon, and had no
authority

authority whatsoever ; and when the invalidity of this law was proved, the prosecutors were not in the least affected by the exposure of such shameful conduct, surprised only that their tricks should have been discovered, but rejoicing in the confidence, that the judges were not to be thwarted, and that it was in vain for a defendant to plead, when sentence was already determined.

In the present state of society the fate of an individual is indeed of very little consequence to the publick at large ; yet I am by no means convinced that this will be always the case, and publications like the present may tend to the improvement of social intercourse, and the destruction of those principles, by which it is now so much interrupted. We have seen by what modes a system of alarm and espionage has been established in this country ; that under the pretext of a conspiracy by republicans, democrates, and levellers, a persecution has been excited against the friends of liberty by those who, with the word constitution in their mouths, are daily violating its first and best principles : that though several instances may be produced of tumults from the latter, and not a single overt act of riot and outrage can be alledged against the former, yet the publick mind is scarcely recovered from its first delusion. By gradually laying open the arts, by which a nation has been deceived, tranquillity will be restored, and a future generation, from contemplating the effects which have always flowed from persecution, will see the error of attacking the liberty of sentiment. By combining together a variety of facts, simple in themselves, it will perhaps adopt these principles, that government is made for the benefit of the community, not for the private emolument of a few individuals ; that every law should derive its authority from the publick at large ; being sanctioned only by the suffrage of a majority of those whom it is to bind ; that though no other expedient may

be found to determine the propriety of a measure than the consent of a majority, yet that the minority, in submitting to its will, is not to be injured and oppressed for a difference of sentiment, should be at liberty at all times to produce arguments, and to endeavour by reasoning to operate a change in the publick mind. My education naturally leads me to admire the genius and exertions of a Newton; yet, highly as I approve of every research into the nature and properties of the material world, I hold unlimited knowledge in this branch of little consequence to society, compared with the advantage to be derived from an accurate investigation of the powers of the mind and the duties resulting from the various relations of an individual to society. The problem of the force of particles of matter acting upon each other at different distances may exercise superiour talents; yet to what purpose is it to know the laws of remote planets, or the action of the sun upon our system, if, while we are interested in the concerns of bodies at a distance, we are exposed to all the inconvenience, which must ever result from an ignorance of ourselves and the chief phænomena in the moral world?

Sir Isaac Newton has, on the simple principle of gravity, built a system, which will establish his fame to remote ages. The true principle of acting in the moral world is not now to be sought after; it has been laid down by our saviour in few words: "Thou shalt love thy neighbour as thyself;" and upon this principle must be built the relations of an individual to the society of which he is a member, and of states to each other. The philosophers of Newton's time had much to unlearn, when he first developed his system: the events of our own time tell us in too forcible language, that true benevolence has much to encounter from the prejudices and passions of mankind. The gross views of private interest in individuals,

duals, and the contemptible desire of wealth and extensive dominion in states clash with every just notion of the general good, and, as long as there is a single individual in any community, who can say that it has deprived him of the means of exercising his talents and increasing his comforts, without injury to his neighbour, there will be found some defect in that community, which it is its duty instantly to remedy. The great subjects, which now agitate mankind, I contemplate with pleasure: I lament, however, that such opposition should have been made to free enquiry, and that this opposition introduces treachery, bloodshed, murder. I lament, that a nation which prides itself on philanthropy, and on its exertions to recall the latent principle of life, suspended by various causes in the meanest individual, should not be anxious to take every possible step, which might prevent the destruction of more thousands of its fellow creatures in one year, than its humanity will save from the grave in the course of ages: I lament that the spirit of benevolence, which could stretch out its hand to the distressed African, and say to him, "Thou art a man, and my brother," should neglect the cries of our brethren at home, and view with unconcern that system of outrageous violence practised in the metropolis, which, exercised on the coasts of Africa, filled every english heart with horror and astonishment: yet, notwithstanding the defection of some, the prejudices of others, and the total disregard of all principle in many, I rejoice that the present convulsions cannot destroy truth, and that principles are now making their way, which must essentially contribute to the future well-being of society. The nature of representative government must be investigated and understood, and that horrible power, which, to the disgrace of the professors of christianity, is supported by them in so many countries, both catholick and protestant, will be overthrown; and the priest, no longer able to impose upon mankind by the

grandeur

grandeur of his temporal establishment, by his wealth, and by his ability, to crush every opponent, not by argument but force, must submit to a new mode of conduct, and, for his own happiness, as well as that of the community, must listen to reason, and enforce his doctrine by the gentle mode of persuasion.

In the progress to this better state of society individuals have, it is to be feared, much to suffer : still it appears to me wrong, that they should be deterred by pains and penalties from proclaiming what appears to them to be true, and from pursuing that mode of conduct, which has in view the general good. On this account I shall not scruple at present, nor, I hope, at any time, to explain my sentiments ; conceiving that whatever matter of derision they may afford in the higher walks of life, there may be in others a desire excited by the simple declaration of these sentiments to investigate their truth or falsehood. I lay it down then as an improvement in the art of government, that every law should be submitted to the people at large, and that representative government should be founded on universal suffrage, meaning by the term, that every man arrived at years of discretion, and not having been rendered incapable of exercising this right by a derangement of his faculties, should have a vote in the election of a representative. If authority were requisite to sanction the latter position, we might appeal to men of the highest note in this country : but we have higher authority than this to countenance our positions ; for, if the supreme wisdom could condescend to allow the recognition of its authority by the acclamations of the general assembly of a nation, no class in society can feel itself at all degraded by submitting its decrees to the final approbation or disapprobation of the people. In consequence of the establishment of such a mode of acting, the laws, it is evident, must be simple, plain,

plain, concise, cannot bind more than one generation, and in that generation must be liable to frequent revision: for, as every law must be sanctioned by a majority of the people, and life and death are making daily changes in a society, recourse must frequently be had to the sense of the nation. Whether a term of seven, fourteen, or twenty-one years should be adopted for the duration of a law, experience will best determine: and thus, if a nation should at one time make absurd laws, the inconvenience, since freedom of discussion is supposed to be unlimited, will be soon discovered and remedied. As representatives have been found in many nations to consult their private interest instead of the general good, their power should be of short duration: a year is sufficiently long for every purpose, and in that period it should be left to the district to recall its representative, whenever he appears to them either incapable of executing his trust, or abusing it to pernicious purposes.

I should not have thought it necessary to be so explicit in this place, if, since the publication of my pamphlet, my sentiments had not been enlarged by a fuller investigation of the subject. All the arguments, which have suggested themselves on this occasion, cannot be brought within the narrow compass of a preface, and may afford matter for future discussion: but, as I had once suggested that triennial parliaments, and a partial extension of suffrage, would be sufficient for the purposes of government, I think it now necessary to declare my conviction, that universal suffrage and annual parliaments would be more conducive to the general good. The system of espionage established in this country, might be thought a ground to deter every one from expressing his opinion so important a topic; but with all the precautions in sufficient manner. The minister is not allowed his liberty to discover, by the subtilty of art, the weaknesses and passions of his constituents. He must with

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therefore

therefore to be acquainted with them without trouble ; and the easiest way for every one, who has an opportunity of doing it, is to avow them openly. Thus the general sense of the nation will be in time discovered ; the advocates for universal suffrage and annual parliaments, will be seen to occasion no real ground of alarm to any one. We are in a minority, and profess to use no other efforts than those of argument. Should we become the majority, there cannot be a doubt that the minority will comply with the new measure, with the same ease as we do with the old. The change would be produced without confusion ; and as the suffrage has been taken away, in my judgement improperly taken away by parliament, from certain descriptions of persons without confusion, so the suffrage may be enlarged by the same authority, and no one will have a reasonable ground of complaint. In this however and other sentiments, which I have adopted, let it not be supposed that all those whose friendship I enjoy concur with me. They may see these things in a very different light ; and can claim only from me, that no improper influence should have weight on my mind, either in the pursuit of truth, or the declaration of my sentiments. On these terms alone friendship is desirable ; and, as on these terms I have lived, I hope I shall continue to live on the same terms in harmony with men of different religious and political opinions.

I cannot conclude this preface without obviating a remark, which might otherwise be made by the readers of the following pages, who, when they see so many eminent names employed by the university as counsel, might think my cause weakly supported in the king's bench.—But strength depends not on numbers, but ability to investigate a question ; and on the latter ground, we were not fearful of entering the lists with our antagonists. Mr. Gibbs's merits are deservedly stamped with universal applause,

plause, and are far above the testimony of a private individual: but my friend, Mr. Raine, might by some have been considered as not of sufficient standing at the bar, to take upon himself so large a share of the pleadings, when he was to be opposed to veterans of the art. Independent of the interest which he took in this cause, there were other reasons, which induced myself and friends to place the utmost reliance on his exertions.—We were, from his progress through one of our chief schools and the university, acquainted with his distinguished merits as a scholar; and were convinced, that the superstructure raised on this foundation could not, when his abilities had an opportunity of being displayed, fail of promising him equal distinction at the bar. Thus, notwithstanding our ill success, it gave us pleasure to hear, that our cause could not have been in better hands, and that nothing on our part was wanting for the information of the court.

I must here too take notice of a circumstance, which was mentioned to me during the time of writing this preface. A dignitary of the church lately deceased, observed, on reading the account of the proceedings in the university, that my denial of any attempt to proselyte my pupils, when tutor of a college, was overthrown by a remark of my own upon another occasion; namely, that ten thousand books of various sizes, written by various authors, had been distributed either by myself, or others under my direction, from the place in which I then was. This worthy dignitary did not make a distinction with respect to the times when these books were distributed, or the subjects of them. I specified indeed two subjects, the slave trade and the test act, which might have led him to conclude, that many of the books, if they had been distributed among my pupils, did not tend to proselyte them to heretical doctrines. The fact is, that of the ten thousand

sand books referred to, many were composed by me for
 funday schools, which were used in those I had been
 instrumental in forming, and are used, I believe, at present
 in various parts of England. Among them also is
 included a collection of psalms, which is still perhaps
 used in some churches; and indeed application was made
 to me about five years ago for a quantity of them,
 by a doctor in divinity of the university, with which I was
 unable to supply him, as out of a thousand only two co-
 pies remained in my possession. These books were distri-
 buted before I had discovered my errors, and conse-
 quently before I could proselyte my pupils to such
 opinions: they contain nothing heretical, according to the
 orthodox sense of the word, have been used and approved
 of by many orthodox clergymen; and I think I can take
 upon myself to say, that, as these books were designed
 chiefly for children, none of my pupils had an opportunity
 of seeing them afforded by me, and most probably not
 from any other quarter. To the best of my recollection,
 there could not have been a less number printed than five
 thousand of these little books, which, however, were not
 put into the hands of any bookseller, and were dispersed
 by the end of the year 1787. From June 1787, to the
 publication of the pamphlet, which occasioned my dis-
 mission from the tuition, I remained inactive, having in
 that interval caused only to be sent to the members of the
 senate some copies of the laws relating to subscription.
 From the time that I ceased to be tutor, my books certainly
 bore a different aspect; very large editions of my addresses
 on the unity of god and the divine adoration improperly
 paid to Christ by various sects were circulated; and I am
 not without hopes that the seed thus sown has been pro-
 ductive of good. We know that the society for abolishing
 the slave trade has distributed books in vast numbers; and
 to inform the publick mind a similar measure is in all cases
 expedient. From my own experience also on this subject,

I recommend

I recommend earnestly this method to others, whom I encourage to expect more from the distribution of little tracts, in popular terms, than can be expected by learned and voluminous exertions.

Thus I shall always be ready to vindicate any part of my conduct, when the objections come fairly before me, and I can without impropriety bring forward the refutation of them. It is not to be expected, that I should always hear the insinuations of adversaries, who fear the light: I know with whom I have to cope, and the falsehood they propagated against me, a falsehood easily detected by the evidence of many thousands in the neighbourhood of Cambridge, convinces me that there is nothing which they will not dare to do in support of their cause, and that it will be an irksome task to oppose such unworthy antagonists. Whilst their calumnies are intended only to injure myself I can hear them with composure; yet my indignation, I confess, rises when I discover the steps taken by themselves or their partisans to injure my friends. Thus at this moment a copy of a letter is before me, written by a doctor in divinity of the north to the members of a city company, in whose gift is a lectureship, for which a friend of mine was candidate. To be interested for one candidate in preference to another is certainly allowable; but surely a man of probity will not condescend to the use of any ungenerous arts to depress his adversary. My readers will hardly think it possible, that this divine, this true son of the church, should assign as his greatest reason for wishing success to one candidate was, that his "principal competitor is firmly attached to "Mr. Friend of Cambridge, which he confidently avows." Fortunately this company, with which I am not at all acquainted, was not so alarmed at this confident avowal of friendship, and the menaces of the divine were treated with marked contempt. From their, and too many other specimens,

specimens, I know what I have to expect : yet the malignity of some, and the credulity of others, shall not prevent me from using the proper instruments of self-defence ; and, if I cannot teach the cabal a more generous mode of attack, I shall, I am confident, in the course of not many years, have brought the publick to a full conviction, that the academical censures fulminated against me did not proceed from an examination and conviction of any thing erroneous in my writings, but originated in the spirit of party and the grossest views of self-interest.

The reader is desired to correct page 55, where Dr. Farmer is by mistake said to have been only once vice-chancellor, as he has held that office twice. The term cubicks also escaped the authour's pen in page 8. This name was given to the cabal in the university on its first boasting of the number twenty-seven, which met at the vice-chancellor's house to deliberate on the mode of proceeding. The mathematicians, hearing so much of the twenty-seven, applied this term to them, which soon became general. It may not be improper to notice here also the deviations from the common mode of spelling ; thus in the words derived from verbs, such as directer, electer, from the verbs direct, elect, the authour follows a mode of spelling, for which he has only the sanction of antiquity, analogy of the language, pronunciation, and derivation : for it is a mistake to suppose that these and similar words came to us immediately from the latin ; and in conversation they are not pronounced director and elector.

--- S E Q U E L, &c. ---

AN account of the proceedings in the university of Cambridge, against the authour of a tract, entitled Peace and Union, recommended to the associated bodies of republicans and anti republicans, has already been given to the publick. From the decision of a vice-chancellor's court and a committee of delegates, application has been made to the court of king's bench : and this court has given its sanction to the proceedings of the university. There remains only one court more on earth, to which an appeal can be made ; and that is in the breast of every individual, who has leisure and ability to investigate a question of no small importance not only to academicks, but to all persons interested in promoting the publick welfare by the produce of their studies. To this court the appeal is cheerfully made ; with a full conviction in the mind of the writer, that the outcry raised against him was not the effect of zeal for religious opinions in mistaken but conscientious men : it arose on the contrary from a cabal, which seizing the opportunity, when a most profligate system of espionage was introduced into this country, sought to recommend itself by the ruin of a man, whose audacity, in thinking for himself and professing his principles, had made him an object of fear and detestation to the patrons of implicit faith, indolence and corruption.

RECAPITULATION of the PAMPHLET.

Ground of com- It may not be improper to recapitulate
 plaint against the here the contents of a work, which occa-
 authour. sioned so much alarm. As it came from
 one not connected with any political society; who repro-
 bated the cruelties perpetrated under the french revolu-
 tion, but rejoiced at the overthrow of a monarchy and an
 established superstition held in horror by our ancestors;
 who considered the examples of France and America by
 no means a sufficient ground for the overthrow of our
 present form and government; and who indeed did not
 examine the question, whether our constitution was in
 theory or practice the best, but took it for granted, that
 no change was to be introduced unless from the desire of
 a majority of the people; it may seem astonishing, that
 so many persons should unite in exclaiming against the
 work, and endeavouring to overwhelm its authour by every
 calumny in their power. The fact is, that the less ground
 of complaint there was on the principles of the constitu-
 tion, the more danger was apprehended from the recom-
 mendation of several species of reform, which could not
 fail of striking an intelligent reader. The abuses of a good
 government must not be mentioned in a country, where
 so many thousands profit by them: and the least attempt
 to improve and enlighten mankind, is considered as the
 most dangerous species of innovation by those, who bat-
 ten on the dregs of corruption and influence.

Contents of Peace The reforms recommended were classed
 of Union. under three heads, representation, law,
 and religion. Under the first the shortening of the du-
 ration of parliaments, increase of votes in boroughs, ex-
 tension of the right of suffrage to copyholders as well as
 freeholders, and the antient system of government intro-
 duced

duced by almost the only king of this country, who seems to have had the good of his people at heart, were recommended. Under the second head some evils in the modern system of law were enumerated; and the more its iniquity is developed, the greater reason will every one see for wishing many other things in it to be removed, which seem planned only for the confusion of all ideas of natural justice and equity. It was doubtless a heinous crime to recommend, that the laws should be plain and intelligible; that the jargon, which pervades all the courts, should make room for common sense; that the remains of the feudal system and the game laws should be abolished. This may be a heinous species of delinquency; but so far is the writer from being inclined to retract his judgement, that the more he has seen of this branch of our government, the more does he applaud our Saxon ancestors; and he looks upon the decision of twelve men, unhackled by contradictory statutes, unmeaning precedents, and judicial expositions, as far superiour to all, that is called the wisdom and experience of law. Under the third head some changes in the religious establishment were desired. The writer did not indeed bring forward the whole of his faith, nor did he think it necessary at that time to recommend his peculiar tenets: it seemed sufficient to him to explode the foolish ideas entertained of uniformity of opinion; to recommend what had prevailed even in popish times, a diversity of liturgies; and to call upon all parties, to find a substitute for the better payment of the clergy, than that, which is now the occasion of mistrust and discontent in too many parishes. He considered it too as absurd, that any person should be subjected to the rites of a church of which he disapproves, and that to enjoy a civil office a religious test should be thought necessary.

TRUE OBJECT of the PERSECUTION.

Religion made a pretext by the twenty-seven. THESE religious opinions were greedily caught up by the cabal, and to insure success, they imputed to the writer others

which he did not maintain. The vilest insinuations were daily thrown out against him, and the ministers of peace indulged themselves in every species of malignity and persecution. That religion was not the real ground of their actions is evident from the little concern, they had shewn, when the most sacred articles of their church were by the same person but a few years before in the most publick manner impugned; when he in utter defiance of academical statutes declared the doctrine of the trinity to be a mere figment of metaphysicians, totally unfounded in scripture; when he called upon the university to give a sanction no longer to the idle tales of their forefathers, but to worship as they ought the god and father of Jesus Christ; when he renounced intirely all obedience to and connection with the church, and withdrew his assent to those articles and canons, to which, from want of knowledge and instruction, from the prejudice of birth and the false opinion of wisdom and integrity in others, he had been induced to give his signature. If the men, who were so active in writing to their bishop, and making the house of the judge the seat of their intrigues, had really been influenced by a zeal for their supposed religious truth, why did they not then attack so open an impugner of their doctrines? Why did not the vice-chancellor and heads, who themselves heard him inveigh against established opinions, call him to an account? Why did they not insist on a statute being put in force, when the crime, if it is really a crime among protestants to speak the truth, was evident, when there was scarce a man in the university, who could not bear testimony against the heretick?

Why

Effects of the pro-
clamations.

Why was it not then done? the answer is obvious. The publick mind had not then been poisoned by proclamations: the terms jacobin, republican, and leveller, had not been familiarised to an english ear; it was not thought possible, that men should be confined in prison for maintaining and printing those sentiments, which had been the means of elevating others to the highest departments of the state. It was not thought possible, that the english nation should be so degraded, should have so far lost every idea of its ancient dignity and honour, that the basest part of the french monarchy should be introduced into and patronised in this country; that spies should be everywhere encouraged; and that a society should be formed in the capital, to receive anonymous information, to harass and destroy every individual, who would not subscribe to its insolent opinions of government.

Reasoning of
the cabal.

But the time came, when his majesty's attorney general thought it expedient to set some bounds to the liberty of the press; and the loyal and orthodox members of the university could not be behind hand in shewing their attachment to the good old cause. This was a fine opportunity to put a stop to the discussion of religious tenets, and to check the torrent, which was dreaded, of improvement and reformation. It would be disgraceful, they said, when his majesty's attorney general was so industrious, that the university should be idle; and forgetting that the object, not only of the statute, which they brought forward, but of all honest christians, is not punishment, but the prevention of error, they met together with the sole view of inflicting as much punishment as it was in their power to devise. Foolish and inconsiderate men! What avails it, that ye have deprived a student of the little solace left to him; that ye have shut against him the doors of those libraries, in which

your footsteps are seldom heard; that ye would bar against him every avenue to knowledge, and, from the scanty wreck of his fortune and his hopes, grudge him his lodging and his food? Wicked as your plans are, the futility of them is equal to their folly! Ye have driven one student from his books, but his opinions are left behind. Ye cannot banish thought; and thought engenders thought; and future students, whilst they reprobate your meanness, and your malice, will investigate the opinions, which have given rise to so much persecution.

Proceedings in Jesus college, and consequent application to the court of king's bench.

The cabal succeeded in their plans; and it could not be otherwise, when the accusers were either judges themselves, or acted in concert with the judge: but, as they had brought forward some statutes, as a pretext for their conduct, it was thought right, that the legality of their proceedings should be investigated. Certain fellows of Jesus college had begun the attack, by writing to the bishop of Ely, their visiter, and the vice-chancellor of the university, on the subject of the pamphlet; and, as they had thus put themselves on the footing of accusers, there seemed to be an apparent inconsistency in their presuming to sit in conclave on the merits of the work, and to become the judges, as well as the accusers, of their colleague. But from these men delicacy of conduct was not to be expected. They had written to their visiter; he very kindly desired them to do the business themselves; they were happy in the certainty of having their measures confirmed, and the statutes, they knew, were a nose of wax, which they could break when they pleased, or convert with ease to the injury of another. Presuming, therefore, to make them-

selves

selves the judges of a book, written by one of their colleagues, with unabashed foreheads, they set themselves to work ; they found a statute, which declared, that men of bad morals should be driven from the college ; and, with impudence inconceivable, these very men, who could find only one fellow besides to be of their party, joined with the master of the college, in declaring the writer of a pamphlet driven from his college, till he, to whom they had not alledged any immorality, or any crime, could bring proofs of his good behaviour. The bishop confirmed the sentence ; and these fellows enjoyed a triumph, by which the studies of their colleague were interrupted, and the plunder of his property was chiefly divided among themselves.

Application to the
court of king's bench
on the college pro-
ceedings.

An application was made to the court of king's bench, on the ground, that no crime against any statute had been pointed out ; that the statute, on which the sentence was founded, required the concurrence of a majority of the fellows ; and that six only, out of sixteen fellows, had concurred in the sentence of amotion. The court refused to attend to this application, because there was a visiter, and the decisions of a visiter are, it now seems, to be considered as final. The usurpation of the master and a few fellows of the college being thus sanctioned, very slight hopes could be entertained of redress, unless some important and desirable changes take place in the political world : and, the college cause being dismissed, the proceedings of the university remained to be taken into consideration.

Proceedings in the university, and consequent application to the court of king's bench.

Proceedings in the university. The nature of these proceedings is now generally known. A cabal, distinguished by the name of the twenty-seven, or the cubicks, met at the house of the vice-chancellor, and determined to prosecute the authour of Peace and Union: he was cited, in consequence, into the vice-chancellor's court, which, consuming eight days in the hearing of this cause, condemned him to banishment. From this sentence an appeal was made to the senate of the university, in which the cabal, with equal activity, interested itself in the election of delegates, and appointed such persons as, either from a declaration of their sentiments, or other sufficient ground of presumption, it conceived, would confirm the sentence of the vice-chancellor. The proceedings of the delegates were conformable to the wishes of the electors, and totally incompatible with either former usage or the nature of appeal. They cited the appellant into their court; whereas the true mode was for the appellant to call upon them, and request their acceptance of the delegation; and one of the lawyers seemed, even by his outward deportment, to consider himself as counsel against the appellant. Whether there is sufficient ground for the report, that Dr. Jowett, one of the most active of the twenty-seven, accompanied by Dr. Milner, did really confer with Sir W. Wynne on the subject of the appeal, previous to the meeting of the delegates, time alone, or the positive declaration of these persons, can discover; and it is mentioned here, that, if innocent of the charge, they may do themselves justice, by a positive disavowal of the fact. Suffice it, that the appellant neither directly nor indirectly had any communication with the delegates; that he

he knew not by whose means they came into court, so well prepared with documents, as to excite a conjecture, which their readiness in determining almost confirms, that they had prejudged the cause; and, if there really was a communication between them and the twenty-seven, or the heads, on the subject of the appeal, such conduct must be considered as a consequence only of that gross injustice, which was apparent in the onset of this prosecution, and as another insult offered not to an individual only, but to the body of the university.

It would scarcely be necessary to repeat here the motives for an appeal to the senate, if the subject had not been much misunderstood and misrepresented, not only in various companies, but by the chief justice himself, sitting in his judicial capacity. The laws of the university require, that every appeal from the vice-chancellor's court to the senate should be made within two days after the passing of a sentence; and a neglect in this instance would render futile every other attempt to obtain redress. Had the appeal not been made in the present instance, when the cause was confessedly tried in the vice-chancellor's court, the king's bench could not have taken cognizance of it; for the reply of the university would have been, that, if injustice had been done by the vice-chancellor, a mean of redress was open, by an appeal to the senate. This has been stated in another place, but the argument has not been properly considered: on the contrary, it has been asserted, that by an appeal to the senate an acquiescence was implied, in the propriety at least of a trial in the vice-chancellor's court; whereas the only reason for such an appeal was to obtain redress in the court of law's bench; and it cannot be supposed that any great expectation of redress was formed from a meeting of lawyers, when it is considered, that the twenty-seven named haveen and

earth

earth to secure their own men, whilst the appellant not only made it a point of conscience not to interfere in the election himself, but positively resisted every mode, pointed out by the zeal of friendship, by which the career of the cabal might have been checked. Yet what can resist the influence of intrigue in publick bodies, as society is at present constituted? When men are lost to all sense of decency and honour, when they scruple no means to obtain a certain end, when they use every argument that can be applied to the passions, the prejudices, or the interest of the voter, what chance has the individual, who relies only on his own integrity, and the justice of his cause, and disdains the use of those arts which insure success to his antagonists?

Grounds of the application to the court of king's bench.

The delegates, by confirming the sentence of the vice-chancellor, paved the way for an application to the court of king's bench, which was made chiefly upon the following grounds: That the pretended offence was not cognisable by the statute under which it was tried; that an offence against that statute was not cognisable in the vice-chancellor's court; that the recantation proposed did not specify any errors, by which the statute was violated; and that the sentence pronounced was not itself agreeable to the statute. The two former points were affirmed to be evident from the words of the statute, the nature of the vice-chancellor's court, and universal practice; for not an instance can be produced of a person being punished, under the above-mentioned statute, for refusing to retract any opinion published only in writings, nor an instance of any person being punished under this statute in the vice-chancellor's court, though there are several instances of persons being convened before the vice-chancellor and heads for a violation of this statute, and

and treated in a very different manner from that which a court of law requires.

Cases referred to. In support of these opinions references were made to the cases of Chark, Brown, Browning, Milayn, Chadwick, Johnsen, Bambridge, Baret, Baro, Whiston, Duckett, and Waller, which, it was supposed, would have thrown considerable light upon the question; and, as they contain much curious information on the progress of religious toleration and instruction, merit the attention of every impartial reader.

CHARK'S CASE.

THE first instance upon record is that of William Chark, fellow of Peterhouse, who, in a Latin sermon*, on Dec. 3, 1572, asserted, that the states of bishops, archbishops, metropolitans, patriarchs, popes, were introduced into the church by Satan; and that among the ministers of the church no one ought to be superiour to another. For these opinions he was convened before the vice-chancellor and heads, required to make a publick recantation, and, on his refusal, was banished from the university. From this sentence he appealed, but the vice-chancellor refused, and, it seems, with great propriety, to admit the appeal; for he judged†, that no

* *Contra ad clerum.*

† Isaac Milner, the vice-chancellor in W. Friend's case, was aware of this distinction, and hesitated on the propriety of admitting the appeal; which, indeed, he could not have admitted, if the sentence of banishment had followed a refusal to recant. In the manner proposed by the vice-chancellor and heads assembled in private, and in the vice-chancellor's court, and he felt the force of truth; he knew that he lived in a different court, from which there lies an appeal to the senate, and upon this subject the erroneous opinion of Lord Kenyon was supported by great preponderance of the matter, he says, *sent.*

appeal could in reality be made, when sentence followed one, that had confessed what was charged upon him ; and that there could be no appeal, when the sentence is given by the “ vice-chancellor, with the assent of his fellow “ judges, the major part of the heads of colleges.” The mode of conduct pursued in this case is best seen by the letter, written to the chancellor of the university, by the vice-chancellor and heads of colleges, in vindication of themselves, against Chark’s censures*.

“ Our duties in most humble maner to your honour remembered. Your lordships letters, written in behalf of Mr. Chark, have made us al not a little perplexed ; partly for the boldness of him, who, for so notorious a fault, and manifest breach of statute, would attempt to procure your lordship’s favour ; but, most of al, for that we are hereby brought in some doubt of your lordship’s good liking of our proceedings in that case ; wherof, to render a just account, and that your lordship may thereby the better judge what lenity hath been used on our parts towards the said Chark, contrary to his report (as it seemeth), may it please your lordship to be advertised of the whole matter from the beginning.

“ First, omitting the great expectation of many, long before his sermon, raised (as may probably be thought) by some speech given out by him concerning those things, wherof he would entreat ; leaving also his singular confidence, used in the whole action and utterance of his sermon ; even at that time, when he was called before us, besides the obstinate defending of his errors, he spared not in presence to overthrow divers of the heads, in very unseemly maner, and with taunting words ; nevertheless bearing with his want of discretion beyond his deserts, and seeking to allure him by gentle persuasions, we thought good he should severally be communed with by three or

* Stryck’s Life of Whitelocke p. 43.

four of our company. After which conference, though they had little prevailed with him, yet that he should not think himself too straitly dealt with, we graunted him more than seven weeks space, to consider thorowly of his grounds, and after good advisement to yield his answer upon the same, giving him further to understand how we could do none otherwise than the statute required, if he should persist in his conceived opinions.

“At the time appointed we found him nothing altered; howbeit, still wishing his good conformity, and meaning rather to reduce him charitably, than suddenly to cut him off, we offered, that if he would but only promise, upon better deliberation, to revoke his assertions, he should be respected for the performance thereof til after Easter; which, for that before us al, he utterly refused to do—it was concluded with one consent, that he should incur the pain of the statute, that is, to lose both his college, and also the university.

“Now, if this punishment had been enjoined him only by our arbitrement, and not by statute, yet his demerits being such as we have declared, and he cannot deny, he could not justly have complained of over much severity, But seeing we have done nothing of any private consideration in this case, but our sentence hath been wholly directed by her majesty's statutes, delivered unto us, as a rule to guide us, and wherewith to dispense is utterly forbidden us, we much muse what colour of defence he can seem to pretend. And, surely, how necessary it is that we have such statutes, and, notably, that one concerning *preachers* (which statute was sent enclosed, the malice of these times doth easily show; for, since Chark hath broached these untimely contentions, others have ventured to continue the same; whereby the minds of some are so incensed, that in many colleges they study and devise only how to molest and afflict their governors; their drift,

as it is wel known, being nothing elie but to procure to themselves a licentious liberty, wherein, if they may find favour through their importune suits, our state is most miserable of all others. What poison lieth hid in popularity cannot be unknown to your singular wisdom : our labours and travails, in suppressing the same, must needs be joyned with occasion of great envy, which we shal never be able to resist, unless we be supported by your lordship's authority, and others that are placed in the chiefeest rooms, especially when the difference consisteth in this ; whether we shall be borne with for executing our laws, or others, by indulgency, encouraged to break the same.

“ And yet for Chark we have further to report, that after the delivery of your lordship's letters, being again demanded, whether he would yet promise to retract his former doctrines, he would in no wise yield therunto, but made the like refusal as before, adding, that he thought your lordship's meaning was not to have him recant ; wherein, as your lordship may wel perceive his great presumption, so did he nothing deceive the expectation of some of us, who have noted him in the like haughty stomach, ever sithence we first knew him.

“ Thus having dissembled nothing, but plainly laid forth the cause, as it is, we are most humbly to crave your lordship's favourable assistance for the repressing of this, and the like enormities, wherwith we are so greatly incumbred at this present, that of force we should faint, were we not sustained with the only hope of your lordship his good acceptance and countenance of our dutiful travailes in that behalf. Even so praying the almighty long to preserve your honour, to our great comfort, and the wealth of this state, we humbly take our leaves.

From Cambridge, the 2d day of March, 1572.

Your lordship's ever most humble at commandment*.”

Subscribed by the vice-chancellor and ten heads.

BROWNING'S CASE.

BROWNING was convened before the vice-chancellor and heads about the same time, for uttering in St. Mary's, certain doctrines, tending to the heresy of Novatus, and prohibited from preaching again, till the question had been thoroughly investigated. In spite however of this admonition, he did preach again, and for his contempt of authority, totally independant of the new statute of Elizabeth, was committed to prison*. As besides the heretical opinions advanced, he had touched upon matters of state, the question was thought of higher consequence, than to be settled in the committee, and in February he was bound in a recognizance of two hundred marks to answer for the same, when called upon; and Booth and Shedley, two fellows of the same college, were bound in forty pounds apiece for his appearance. Thus released from the committee he was turned over to the chancellor, to answer for these dangerous words, by whom he was treated with great mildness; and it does not appear, that his ecclesiastical doctrines were afterwards examined by the committee. His conduct however gave great offence, and some years after he was, on the pretext of having disobeyed a college statute, deprived of his fellowship.

* Reg.^d of the university, anno 1572. Jan. 27. Johannes Browning, M. A. et thesaurarius Scholæ, et p^r D. v. cancellarium ad intra professorum, scilicet D. D. Peckole, Henricus Kitch, Mey, Whitbyer, Chaderton, Harvey, Shepherd, Guald. A. et ceteros, ad intra cancellarium Talethei. Et quod prohibuit per doctrinam vel sermonem in D. v. cancellarium, ne contra verum, quia contra legem, et contra bonos mores, et contra pacem publicam, et contra pacem universitatis, et contra Regiam Academiam, et contra

BROWN'S CASE.

IN the same year 1572, Brown was convened before the vice-chancellor and heads for two sermons, the one delivered on the Sunday before Christmas, the other on the 25th of January following, on which it was objected to him: 1st, that in both the said sermons he uttered doctrine and reasons tending to the infringing of the order and manner of creating or electing ministers, or the regiment now used in the church of England, or tending to the corrupting of Musculus's reasons, whereby the said Musculus would establish the said order or regiment now used. 2d, That he said no priests, made in the popish time, ought to have any function in the church of England, except they were called again, or words tending to that end.

Brown's account Upon these articles he was frequently of the meeting. called before the committee, examined by it, treated sometimes with harshness, so far as to be confined to his rooms, but, according to the vice-chancellor's account in his letter to the chancellor, every delay was used, upon the hopes of farther conformation, and that by reasonable means he would be ruled. Brown wrote also in July 1573 to the chancellor, and gave the following account in Latin of his treatment. "Five months ago," says he, "I preached before the university, and, in the opinion of those who felt themselves hurt by my censures, inveighed against certain vices with too great asperity. In consequence I was convened before your vice-chancellor and the heads. Certain articles were objected to me, but there was not an accuser: and, when I persisted in it, that such things never came into my mind, much less that I had proposed them to the people, some men in the university were sent for, who being supposed

posed to have been present at my sermons, were compelled to relate upon oath, what they had heard me speak, and to leave their declaration in writing signed with their own hands. By these very declarations, if the heads had acted according to law, I must have been acquitted: for some of these hearers freed me from every suspicion, others heard nothing at all, others hesitated much in giving any opinion. It was however determined, by what mode of argument the heads only know, that I should retract propositions, which I really never taught, though some persons with bad ears dreamed that I had taught them; and this condition was added, that, if I refused, I should not only be expelled my college but banished from the university." After some observations on the recantation and the difficulty of pleasing men, who would prescribe the voice and gesture, with which it should be performed, he continues: "Let it suffice that an innocent man has been called very often before the heads, has been examined, has been confined to his rooms. Permit them not to cut me off in the career of my studies, to deprive me of my livelihood, to take away my character, to drive me into banishment, especially since I confine myself within the royal laws, which I have subscribed before the vice-chancellor*." This application, however, did not meet with success: he complied with the terms of the meeting, and in the November following made his recantation†:

BROWN'S RECANTATION.

WHEREAS I, preaching in this place the Sunday before Christmas, and also the twenty-fifth of January last past, was noted to have preached offensively, speaking as well against the manner and

* App. to Stryker's Life of Baxter, lxxv.

† R. 1. 12. 12.

form of making and ordering of ministers and deacons in the church of England now established and allowed, as also against such priests as were made in king Henry's and queen Mary's time, saying, that they were not to be admitted into the ministry without a new calling, I let you all to understand, that I never meant so. For I do here acknowledge, and openly protest, that the manner and form of ordering of ministers and deacons in the church of England now established is lawful and to be allowed. Item, that the priests made in king Henry's and queen Mary's time, now allowed and having or exercising any function in the church, are lawful ministers of the word and sacraments, without any new ordering otherwise than is prescribed by the laws of this realm."

MILAYN'S CASE.

THE troubles to which every man, who dissented in those days from the ruling powers, was exposed, did not deter Milayn, a fellow of Christ college, from declaring his religious opinions. In October 1573 he publicly preached at St. Mary's doctrine stigmatised as erroneous, was convened for it before the vice-chancellor and heads, acknowledged the preaching of such doctrine, was often required to confess his errors, but on refusing to comply with the exhortations of the meeting, and calling on the contrary upon it to receive his doctrine, was banished from the university. This is the account given by the vice-chancellor by letter, as was usual in those days, to the chancellor; in which he states, "that among other thing, Milayn entered a discourse of
 "the ordering and making of ministers, of fasting, of
 "fasts eyes, of keeping their days festival, avouching
 "these conclusions: 1. That the ordering and making
 "of ministers, now used in the church of England, is an
 "horrible

“horrible confusion, and contrary to the word of God
 “2. That ignorant ministers were no ministers. 3. That
 “to command saints eves, as of the apostles, the virgin
 “Mary, &c. to be fasted, is abominable idolatry. 4.
 “That to command the same saints days to be kept and
 “observed as holy days, is abominable idolatry *.”

Contents of The vice-chancellor besides enclosed a
 Milayn's sermon. brief extract of Milayn's sermons, and
 committed a large report to Mr. Howland, the bearer of
 the letter, and who had also himself endeavoured to re-
 fute, in the same pulpit, the grievous errors above men-
 tioned. As it is curious to see on what points the heads
 were so much offended, and what were the subjects of
 dispute in those days of pretended reformation, the re-
 port is here subjoined.

“*The contents of a sermon, preached at St. Maries in Cam-
 bridge, by one Milayn, fellow of Christ's college : against
 the ministry of the church of England.*

“First, That ignorant ministers were no ministers, be-
 cause they were not chosen by God. For they which
 were chosen by God, them God had always endued with
 understanding sufficient. But in those were found no
 such sufficiency. Therefore they were no ministers.

“Secondly, That other ministers, which were both suf-
 ficient to answer their charge, and also ready and willing
 to take upon them the charge of the ministry, were partly
 rejected from their function by the clergy; partly not
 called therunto. It is not lawful to admit him to the
 ministry that cannot preach. And therefore there is in-
 vented a new ministry, namely, a new ministry.

* See the sermon, p. 2.

“ Thirdly, That the clergy of *England* do not only not advance and set forward the edifying of the church; but as much as lyeth in them (and this point he did exaggerate mervailously) they do deface, hinder, and pul down the same, in maintaining both advoultrye and idolatry. First, *advoultrye* was divers ways bouldred, contrary to God’s word, by the pope’s law, called *the canon law*. Considering, that by the canon law, if a man or woman be never so much suspected of advoultry, if the party bring forth twelve to swear, that they think he hath not committed that crime, he is by and by cleared; wherby many advoultries are bouldred.

“ A minister, not being rightly called by the congregation, is no minister.

“ He that is negligent, and maintaineth *officials*, is no minister; and so ought of the people to be accounted.

“ Again, They maintain *idolatry*, in allowing and defending holydays of saints, and fasting on the evens.

“ Fourthly, That the common sort of the clergy, which, although they had learning, were either negligent in teaching, or preaching, or dissolute in their lives, were no preachers, nor ministers before God. And so he perswaded the people to take them; urging also an earnest and effectual reason theretore, viz. That they could shew no proof of their preaching: chalenging any of them out, to shew what one soul they had won by their preaching; affirming, that twelve diligent men would do more good, in all *England*, than all the preachers that now be.

“ Fifthly, That our calling of the ministers was not lawful, because they were not called to any ordinary function, nor to any certain place of the ministry; but were made

(as

(as he said some of them made this excuse) pastors of *England*, not of any private or certain place: which, he said, was clean preposterously don: and that rather a pastor of *England* might make a bishop of *Lincoln*, than the bishop of *Lincoln* might make a minister of *England*.

“ The prince admitting a bishop, called him to an ordinary function. *What*, said I, *to a function*? He stood very much upon that point, to persuade the people, that there was no minister now; and that they ought to look to the matter, it being so weighty, and their souls lying upon it*.”

SMITH'S CASE.

WHEN no one is permitted to discuss an important subject, the peace of the university is said to be well preserved; and this kind of peace seems to have been maintained till the year 1585, when the act of parliament for the better observance of the Lord's day occasioned some disputes on the nature of the sabbath, and the propriety of keeping Sunday, from evening to evening, according to the law established for the Jewish sabbath by Moses. For certain opinions maintained in a Latin sermon on this subject on Ash-wednesday, John Smith a master of arts was convened before the committee; and in its presence on February 21 subscribed a confession, that he had declared among other things in his sermon, “ That the plays at Saturday and Sunday at night were breaches of the Christian sabbath. On Sunday, for that they were at it before the sun was set: on Saturday, for disabling their bodies for the sabbath duties.” On the 26th he appeared again before the com-

* Ap. to Whitgift's Lett. page 6

mittee assembled in the great chamber * of the vice-chancellor in Queen's college, when certain questions arising from his sermon were proposed; in some of which Smith agreed with, in others differed from, the committee. The questions proposed were:

1. "Whether the christian sabbath is to be kept *jure divino* from even to even?" Smith and the rest answered negatively.

2. "Whether the time of the Lord's day is to be continued *jure divino* by the space of twenty-four hours?" Smith answered in the affirmative; all the rest negatively.

3. "Whether the christian sabbath is broken, when some thing is done, which is not necessary or religious?" Smith answered affirmatively; so that necessary be not too strictly taken. All the rest negatively; so that those actions do not hinder religion, or are not an offence to the brethren.

4. "Whether christians are bound so strictly to the observation of the Lord's day in respect of works, as the Jews to the observation of the sabbath?" Smith and the rest answered negatively.

Upon the whole, Smith promised to explain his opinions more fully in another latin sermon, to be first shewn to and approved of by the vice-chancellor; and, as no farther notice is taken of him, it is to be presumed, that his discourse gave general satisfaction. The mode of conduct pursued in this case evidently proves, that, so

* The words of the registry are in *magna camera*; and there is not the least appearance of a court of law in the transaction. The whole was clearly done, as in all other cases of this sort, by conference.

far from not specifying errors, the great business of the committee was to find out the errors, to point them out to an ignorant or tenacious preacher, and to be satisfied with the easiest and least ignominious mode of recantation *.

CHADWICK'S CASE.

ABOUT two years after, offence seems to have been justly taken at a sermon preached at St. Mary's by Charles Chadwick, M. A. fellow of Emanuel college, in which much abusive language was used on occasion of the non-residence of some members of the university, particularly the governors of colleges, whom the preacher called murderers of many thousands. For this sermon he appeared on November 2, 1587, before the vice-chancellor and five doctors, who are stiled *iusticiarii dominæ reginæ*, and entered into a recognisance of fifty pounds, to appear in person, or by his attorney, before the vice-chancellor, whensoever legally summoned, to answer for it, and to any other persons, who were injured by and intended to prosecute for words then and there uttered. In this case there were prosecutors; and the cause was of a different nature from those † that were brought by the statute, under the inspection of the committee, and treated therefore differently: it was a cause of libel and criminal accusation, and a recantation would not have satisfied the persons injured; but, from

* Strype's Annals, iii. vol. i. p. 17. A. 1585.

† The doctors before whom he appeared were John Dod, Richard Hooker, &c. There were prosecutors. He was bound in respect of the oath upon which the vice-chancellor was able to prosecute, to the oath before which he stood, that he might appear by himself, rather than in a criminal case, where one might lose who a question only was to be tried. Strype's Annals, iii. vol. i. p. 17.

an imperfection in the register, the punishment assigned for this offence cannot be ascertained *.

BAMBRIDGE AND JOHNSON.

IN the next year the university was in considerable degree of ferment, occasioned by the sermons of Cuthbert Bambridge, and Francis Johnson, fellows of Christ college, against the episcopal government of the church of England. For these sermons they appeared before the vice-chancellor and heads on January 23, 1588, and being required to answer upon oath the questions proposed to them, and refusing to comply with this requisition, were committed into safe custody. Against this conduct they protested, declaring at the same time their readiness to appear before the chancellor, to clear themselves of any crimes laid to their charge, or to receive any punishment which he should assign. Both parties wrote to the chancellor upon this occasion, who, in reply to the letter of the heads, intimated, that there had been too great severity in their proceedings; and recommended, that the two delinquents "should not be dealt rigorously withal." The heads answered, "that they dealt with them in civil and courteous wise, with offer of conference, as of intent to persuade, and not to force them;" but the preachers, taking advantage of the chancellor's expressions, insisted upon it, that, as there was no mention of answering upon oath, he was clearly of their opinion. This occasioned another letter from the heads, to learn the chancellor's mind concerning the oath; and he, in return, told them plainly, that they had taken a very hard course indeed with the preachers, by detaining them so long in prison. In their next letter, the vice-chancellor and heads endeavoured to

* Strype's Annals, iii. vol. 2. b. c. 13. A. 1587.

vindicate themselves, acknowledging "it so to have been, if they had not first essayed by all good and gentle means to prevail with them (the preachers);" but as the law allowed it, and "it was to be justified by the word of God, they thought they were bound, as in convenience and equity so in discretion and duty, thus to procede." Some reflections were thrown out against the disciplinarian party; and they urged, that "they found by experience of this one dealing, that the same had done no little good in the university; for that since that time, some stirring tongues had been very quiet, who before spared neither state nor persons of the greatest honour and merit, living nor dead." This letter was subscribed by the vice-chancellor and four heads; but two protested openly, and one privately, against their proceedings.

Their fate
uncertain.

The cause being now before the chancellor, the opinion of the civilians was taken, for his information, who determined, that "the parties here were bound by law to answer upon their oath;" and it appears that the preachers did in consequence give an account of their sermons upon oath, and answers to the passages declared exceptionable in them. It would be tedious to transcribe the whole of this controversy, as happily in the present days it is considered of little importance: but the fifth article against Bambridge, which probably gave the greatest offence to his judges, deserves, for the sake of shewing the spirit of the times, to be here inserted. It runs thus: 5. "If you mind indeed to awake. As tho he had irreverently reflected upon the sleepiness of the doctors at sermons." In reply to which he says, "To the fifth I answer I said thus, directing my speech to the doctors: If you desire indeed, I speak it with reverence, that they should awake from their sleep, meaning the townsmen, if you would have them forsake the works of darkness, and that Christ

Jesus

Jesus may be heard, provide that Christ Jesus may speak more often unto them." Whether the answers were satisfactory or not, from the distance of time it is not easy to determine: there is no account of any recantation being proposed or refused.

Bambridge was fellow of the college in 1590; but Johnson, who seems to have been more violent, and who held archbishops and bishops to be anti-christian, was in 1593 a prisoner in the Clink*.

BARET'S CASE.

THE proceedings of this petty inquisition seem to have put a stop for some years to theological controversy in Cambridge; but in the year 1595 a dispute arose, which occasioned no small degree of animosity between the heads and the archbishop, the very man who had been the chief instrument in procuring them the means of tyrannising so much in matters of religion. William Baret, fellow of Caius college, in the term after Easter, vented in a latin sermon at St. Mary's several anticalvinistical doctrines, and treated Calvin and the other heads of the pretended reform much in the same manner as they in general treated their adversaries. It would be to little purpose to enter into the merits of this question at a time, when, after many changes of opinion on the meaning of the articles of the church of England, it seems to be doubted, whether they were intended to have any meaning at all†. The nature of the proceedings of the vice-chancellor and heads acting under a particular statute is the chief point under consideration,

* Strype's Annals, an. 1588, iii. b. 2. c. xx. and Ap. lxx, lxxi.

† See Paley's account of subscription to the articles, in his Moral Philosophy.

and much light is thrown upon the subject by their conduct in this transaction*.

Conduct of vice-chancellor and heads. The vice-chancellor first confer'd with the offending preacher, to bring him to see his errours. Not being convinced by the arguments of the vice-chancellor, he was called before a meeting of the heads in the consistory, in which were present, at three several long meetings, the vice chancellor's deputy, and eight of the heads. At these conferences, as they are termed, "he was laboured with to be won from his errours, and to make a quiet end by voluntary publick satisfaction." He persisted however in maintaining his opinions, and was consequently ordered to revoke his errours, in the manner prescribed to him by the vice-chancellor and the major part of the heads. To this there was some demur from the preacher, who requested, that his recantation might be made in the regent house, and not at St. Mary's. This request was not granted, and he read at St. Mary's the recantation delivered to him in writing by the vice-chancellor; but in such a manner as to give great offence, and to provoke many members of the university to testify in writing their indignation at his conduct.

BARET's RECANTATION.

THE form of recantation delivered to him proves, that though there was little liberty of conscience in the reign of Elizabeth, yet no one could be called upon, even in those intolerant days, to recant, without the specification of a single error. The recantation was drawn up in Latin, to the following effect:

* See p. 112 of *Wright's* *History*.

“ In a sermon delivered by me not long ago, most accomplished men, in the church of the university, many things fell from me both falsely and rashly asserted, by which I understand that the minds of many persons have been exasperated. For the satisfaction therefore of the university and of truth, which I have publicly injured, by this publick confession I review and revoke my errors.

“ 1st. I said, that no one in this weak world was endued with so much confidence or certainty of faith, unless, as I afterwards explained myself, by revelation, that he could be sure of his own safety. Now however I profess before God, and acknowledge conscientiously, that the justified by faith have peace towards God, that is, reconciliation with God, and by faith stand with grace in him. They ought therefore to be sure of and secure in their safety with the certainty of faith itself.

“ 2dly. I asserted, that the faith of Peter could not, but the faith of others might fail; because, as I then said, the Lord did not pray for the faith of every one. Now however, being taught by a better mind and sounder judgement, by the words of Christ himself, John xvii. 20, I do not pray only for these, that is, the apostles; but for those who, by their preaching, shall believe on me; I acknowledge, that Christ prayed for the faith of every one; and that, by the efficacy of this prayer of Christ, each true believer is so supported, that his faith can never fail.

“ 3dly. In that I said, that final perseverance was a proud security concerning a future event, a thing in its nature contingent, of which kind is the perseverance of every man, yet I did not call it only proud, but most impious: I now ingenuously confess, that the true and justifying faith, by which the faithful are most closely united
with

with Christ, is so fixed and so secure from futurity, that it can never be rooted out of the minds of the faithful by any temptations of the flesh, the world, or the devil himself. So that he, who has it once, will always have it; for by the benefit of this justifying faith Christ dwells in us, and we in Christ. Therefore it cannot do otherwise than increase, since Christ increases daily in us; and it must persevere to the end, since God bestows constancy.

“ 4thly. I affirmed, that in faith there was no distinction except in believers. In this I confess my error; for I freely acknowledge, that temporary faith, which by the testimony of Bernard is feigned, because it is temporary, is distinguished, not by measure and degrees, but by the thing itself, and differs from that saving faith by which sinners laying hold of Christ are justified before God to all eternity. Besides, I add, that James makes mention of dead faith; and Paul speaks of the love of him who worketh.

“ 5thly. I subjoined, that the forgiveness of sins is an article of faith, but not special, not of this man or that man; that is, as I explained, that a truly faithful man neither can nor ought to believe that his own sins are forgiven. But now I think otherwise, and ingenuously confess, that every truly faithful person by this article of faith, *I believe in the forgiveness of sins*, is bound to believe certainly, that his own sins are graciously forgiven. Yet it does not follow from hence, that this petition in the Lord's prayer, *Forgive us our sins*, is superfluous; for in that petition we pray both for the gift and the increase of faith.

“ 6thly. These words fell from me in my sermon: As to those who are not saved, I most firmly believe, and in contradiction to Calvin, Peter Martyr, and others, say-

nuously profess, that I do thus believe, that sin is the true, proper, and primary cause of reprobation. But now being better taught I say, that the reprobation of the impious is from eternity, and that the opinion of Austin is the true one, namely, If sin were the cause of reprobation, then no one would be chosen, since God foreknows that all are contaminated: and, to speak ingenuously, I do not think and believe otherwise of the doctrine of election and reprobation, than the english church believes, and teaches in its articles of faith, in the article of predestination to this purpose, “ Predestination to life is that eternal purpose of God, by which, before the foundations of the world were laid, he decreed assuredly in his own counsel, hidden indeed to us, to free from sin and perdition those whom he chose in Christ out of the human race, and to bring them as vessels made for honour through Christ to eternal safety. Whence they who are endowed with so excellent a gift of God, by his spirit working in due time, are called according to his purpose, obey the call through grace, are justified, are graciously adopted as sons of God, are formed into the image of his only begotten Jesus Christ; being conformable in good works, walk holily; and, lastly, by the mercy of God, attain to eternal safety, &c.”

“ Lastly, Against John Calvin, a man of the greatest merit in the church of Christ, I rashly uttered these words: That he dared to exalt himself above the truly highest and almighty son of the highest and almighty God. By which words I confess that I have greatly injured this very learned and truly pious man; and I beseech you, in the most humble manner, to forgive so rash an expression. — Besides, I inveighed very bitterly in some things against Peter Martyr, Theodore Beza, Jeremy Zanchy, Fronton Junius, and others of the same religion, luminaries and ornaments of our church, calling them by the odious

name of Calvinists, and blackening their characters with other ignominious words. Now, as our church deservedly holds these men in reverence, it was not right in me to hurt their fame, lessen in any manner their reputation, or to discourage our own people from reading their very learned compositions.

“ I repent therefore and am sorry for the very heinous offence which I have publickly given to this most celebrated university, the temple of true religion, the tabernacle of piety ; and I promise, that by the assistance of God I will never offend in like manner for the future. I most earnestly beseech you also, most accomplished men*, and all others whom by the preceding articles, or by any other part of my sermon, I have offended, that on this proof of repentance ye will kindly forgive me &c.”

CONDUCT OF THE JOINIANS.

SO strong a dose was not relished by the penitent; and as there were many things in it, either capable of dispute, or clearly not within the letter and meaning of the statute, he had good grounds for complaining to the archbishop on the conduct of the heads and some members of St. John's college, who at that time had been extremely active in circulating a libellous account of his sermon. This libel he sent to the arch-

* By "red" being called "man," or "one of the men," are meant the "red" and "black" men. What they were in their day, may be gathered from a statement of P. S. Heyes, Agent for the "Red" Indians, "The same day that I was at the reservation with them, the Indians never saw more of me than the white people saw me." (Ibid.)

4. *Spizella monticola* (Aud.)

bishop, with his own remarks on each article : it ran in the following words :

A copy of Mr. Barret's propositions, which he held at S. Maries in Cambridge. As given out and dispersed by some of S. John's college.

I. A man may fall out of the favour of God, and in again ; yea, quite out of the state of grace, being in.

I have not once named justifying faith in al my sermon.

II. A man may utterly and finally lose justifying faith.

I spake of the ordinary certainty, wherby a man ought not to be secure ; and of none other, as it appears in my sermon.

III. A man cannot be sure of his salvation in this world : yea, it is high presumption to think he may be.

IV. Remission of sin in the creed is general, not particular.

I said not so ; but only, that S. Paul had a revelation.

V. If S. Paul was sure of his salvation, it was by revelation.

I did not say it was the highest, but only the first moving cause.

VI. Sin was the true, proper, and highest cause of reprobation.

I said not so, but that it was inconsideratè dictum.

VII. Beza blasphemed, who said, *Donum fidei a dono perseverantiae separari non potest.*

I said,

I said, he blasphemed in saying, Our Saviour almost despaired; and yet we ought not once to fear.

If I said any such thing, I submit myself willingly to any punishment that your grace shall think meet to inflict upon me; but, in truth, I said not one word to that purpose.

VIII. Calvin blasphemed most horribly, who said, Christ in his agony almost despaired of his salvation; and yet a man should not.

IX. Calvin, Beza, Luther, P. Martyr, and Junius, were false guides; and he merited that we taught not so, and bewailed the iniquity of our time, that we should be so misled by such young teachers*.

ARCHBISHOP DISPLEASED WITH THE HEADS.

THE archbishop now took up the cause, and, expressing his anger at the precipitate conduct of the heads, put a stop for a time to farther proceedings; for it was their intention, that the delinquent should make another recantation, and perform it in a more decent and humble manner. The archbishop tells them in his letter, that his reasons for disliking their manner of proceeding against Barret were these:

I. "The hasty and rash proceeding against him; not giving unto him liberty to confer with others, nor time to consider of those points wherewith he was charged; a peremptoriness not used by the Papists, nor in any well-governed church of Protestants; and, indeed, a rash and untolerable confessorian-like kind of proceeding.

* *Ap. & Univ. Ser. Lib. & Vol. 1. p. 123.*

2. " In that they knowing his care to have these new occasions of contention appeased, and to that end writing his advice therein to the vice-chancellor, to be imparted to the rest of the heads; knowing also, or at least ought to know, that, in matters of religion, it had pleased her majesty to commit the special care to him, (that university also being within his peculiar charge, in respect to the vacancy of the bishoprick of Ely); yet they would not vouchsafe to make him acquainted therewith, as in duty they ought to have don; which, therefore, the archbishop added, he could not take in good part, neither yet suffer.

3. " For that they had proceeded in matters wherein they had no authority; no, not by the statute by them alledged; these points being not within the letter or meaning thereof, although they had suffered, and daily did suffer, both in their colleges, and in other places in town, men to offend against the very letter of that statute, without reproof.

4. " For that, in some points of his retraction, they had made him to affirm that which was contrary to the doctrine holden and expressed by many sound and learned divines in the church of *England*, and in other churches likewise, men of best account, and that which, for his own part, he thought to be false, and contrary to the scriptures; for the scriptures were plain, that God, by his absolute will, did not hate and reject any man, without an eye to his sin. There might be impiety in believing the one, there could be none in believing the other; neither was it contrary to any article of religion established by authority in this church of *England*, but rather agreeable thereunto.

" Likewise to affirm, *neminem debere esse securum de salute*, to what article of religion established in this church, it was contrary he saw not, seeing *security* was never taken in

in good part; neither did the scripture so use it: and what impiety was it to affirm, that a man ought be *certus de salute*, but not *securus*?

“ To say also, that *credentium fides*, or *electorum fides*, *potest deficere totaliter sed non finaliter*, he asked again, Against what article of religion established in this church was it? That it was a matter disputable, and wherein learned men did, and might dissent, without impiety.

“ *In fide nullam esse distinctionem, sed in credentibus*, he took to be an error; but yet without the compass of their authority, having no article directly against it; and an error of that nature, that might be solved by distinction, worthy of reprehension, not of recantation, for any thing he [the archbishop] could yet understand.

“ *Remissionem peccatorum esse articulum fidei, sed non specialem, nec hujus, nec ullius*, was likewise untrue; and that if he had in that manner and sort affirmed it, he shewed therein his ignorance; wherein he should have been better instructed, and in more Christian manner.

“ To traduce Calvin, and other learned men, in pulpits, he could by no means like: neither did he allow the same towards Augustin, Jerome, and other learned fathers, which, nevertheless, had often and many times been abused in the university without controule; and yet if a man would have an occasion to controule Calvin for his bad and unchristian censure of K. Henry VIII. or him and others, in that peremptory and false reproof of this church of *England*, in divers points, and likewise in some other singularities, he knew no article of religion against it; much less did he know any cause why men should be so violently dealt withal for it, or termed ungodly, popish, impudent;

impudent; for the doctrine of the church of *England* did in no respect depend upon them.

“The premises considered, he thought they had dealt in matters not pertaining to that jurisdiction; and, if it remained doubtful which of these points were contrary to the doctrine professed in the church of *England*, and which not, he hoped they would not take upon them to determine thereof.”

In the end, thus the archbishop concluded: “That if
 “they meant not to use him in these cases as a friend, he
 “must use them according to his place, and according to
 “the authority which God and her majesty had committed
 “unto him; and that if they had used these matters
 “according to his directions, and as in good discretion
 “they ought to have done, *Cambridge* had been as free
 “from these controverlies as other places were; whereas
 “now they were offensive to their friends, and a rejoicing
 “both to the common enemy, the papists, and to
 “their private ill-willers*.”

The heads, however, having once committed themselves, found it no easy matter to draw back; and letters and messages passed and repassed between these theologues and their chief. By way of screening themselves from the power of Lambeth, they apply to their chancellor, lord Burleigh, and pretend that they had done nothing which their statutes did not allow. Upon this point the archbishop observes in one of his letters, “that for his
 “part he never thought to infringe any privilege of the
 “university, but had studied more in defence thereof
 “than any there remaining; that the statute, which they

* Stowe's *Life of Whitgift*, p. 440.

“ then alledged, had been procured by his means to his
 “ lordship, and therefore he had good cause to know the
 “ meaning thereof: that in this cause he had only dealt
 “ with them by persuation and advice, in respect of the
 “ peace of the church, and for the avoiding of new
 “ controversies, but that they had not regarded him
 “ therein.”

Heads humbled. This language brought the heads to some humility; and, in compliance with their chancellor's order, they submissively petitioned the archbishop, that some mode might be devised to prevent such men as Baret from spreading their dreadful errors. Thus the cause fell into the archbishop's hands: Baret was twice examined by him; the sentiments of the most learned men of the times were taken; another recantation was drawn, to which, with some difficulty, his assent was obtained, and this mighty dispute was hushed up in as easy a manner as was consistent with the dignity of the contending parties. The new recantation was in latin, and to the following effect:

“ Reverend fathers, and dear brethren, in my sermon
 “ *ad Clerum*, preached some time since before you, I as-
 “ serted some things, which gave much offence to the
 “ ears and minds of many, and that deservedly; for I said
 “ confidently, and stily maintain'd, First, That a tempo-
 “ rary and unfruitful faith is alone with a true and lov-
 “ ing faith; and that there is no difference or distinction
 “ in faith. Secondly, That it is given to none certainly
 “ to know by a certainty of faith that he is elected.
 “ Thirdly, That none can in this world be certain of
 “ his salvation by a certainty of faith. Fourthly, That
 “ remission of sins is an evidence of faith, but not proof
 “ of this or that person. Fifthly, That Peter's faith truly
 “ could not fail. Sixthly, That Christ prayed for Peter's

“ faith onely, that it should not fail. Seventhly, That David
 “ knew not that he could not fal away. Eighthly, That
 “ the gift of perseverance is a future contingent. Being
 “ now overcome by truth, and, according to the appoint-
 “ ment and command of my superiors, I do freely,
 “ openly, and ingenuously, and from my heart, revoke,
 “ condemn, and detest these assertions, as being contrary
 “ to the sacred scriptures, and the orthodox faith, law-
 “ fully approved in the church of *England*. And I do so-
 “ lemnely promise, that hereafter I will never profess
 “ them, or defend them, nor think otherwise of religion
 “ than now the church of *England* thinketh, which I do
 “ believe to be the true church of Christ; and I am sory
 “ I spake so reprochfully of those chief men, Martyr,
 “ Calvin, Beza, Zanchy, whom, I confess, have deserved
 “ excellently wel of the church of Christ*.”

Archbishop's account of the dispute. This business seems to have been brought to an end, after much conference and persuasion with Baret, according to the wishes of the archbishop, about the middle of January; and a recapitulation of the whole was drawn up by the prelate, in these words :

I. “ Baret preached a sermon at Cambridge *ad clerum* ;
 “ wherein divers unfound points of divinity were uttered,
 “ to the offence of many.

II. “ Baret therefore was convented before the vice-
 “ chancellor and heads, and enjoyned to recant.

III. “ Baret did read a recantation prescribed unto him,
 “ but not in such a fort as satisfied most of the hearers.

IV. “ Baret thereupon was convented again, and
 “ threatned to be expelled the university.

* Life of Whitgift, p. 458.

V. “ Baret

V. “ Baret hereupon complaineth to me ; and I writ
 “ down to the vice-chancellor, &c. to desire them to stay
 “ further proceedings against him, until such time as I
 “ might understand the causes of their proceeding, being
 “ matters of divinity : and the rather, because I found
 “ some errors in that recantation, which they had caused
 “ him to pronounce ; which errors also were afterward
 “ confessed by some of them, and were manifest.

VI. “ Hereupon they writ to my lord treasurer, their
 “ chancellor, and complained grievously of Baret ; and de-
 “ sired, that, by his authority, they might procede to the
 “ punishing of him.

VII. “ My lord answered, that he would confer with
 “ me, and refer the matter to my hearing.

VIII. “ But that being disliked by the party that was
 “ sent about the business, as being supposed to be repug-
 “ nant to their privileges, it pleased his lordship to write
 “ his letter to the vice-chancellor and others, to procede
 “ against Baret.

IX. “ Which when I understood, I writ to his lordship,
 “ and desired him to cause stay to be made from further
 “ proceeding in this cause, until better consideration were
 “ had thereof ; some of the things called in question be-
 “ ing deep points of divinity, and wherein great learned
 “ men did vary in opinion.

X. “ His lordship accordingly did cause stay to be made.

XI. “ Then I desired of the vice-chancellor, that some
 “ might be sent unto me, instructed in these causes ; and
 “ that Baret might come up likewise ; to the end I might
 “ the better end the controversies. Al which was per-
 “ formed,

XII. "The dean of Ely, and Mr. Dr. Whitaker came unto me, and so did Baret. I found that Baret had erred in divers points. I delivered mine opinion of the propositions brought unto me by Dr. Whitaker; wherein some few being added, I agreed fully with them, and they with me.

"And I know them to be sound doctrines, and uniformly professed in this church of *England*, and agreeable to the articles of religion established by authority. And therefore I thought it meet that *Baret* should in more humble sort confess his ignorance and error:— and that none should be suffered to teach any contrary doctrine to the foresaid propositions agreed upon.

"And this is the sum of al this action. And if this agreement be not maintained, further contentions will grow, to the animating the common adversaries, the *papists*: by whose practice *Baret* and others are set on; some of his opinions being indeed popish*."

BARO's CASE.

THE points, which Baret had discussed in his sermon, are of too intricate a nature to be easily settled, even by laborious students; and the archbishop, aware, perhaps, of the difficulties attending the controversy, and willing to retain his own authority, and preserve what is called the peace of the church, drew up nine articles, which, being sanctioned farther by the authority of the archbishop of York, on the 26th of November, 1595, were sent to the heads, with strict injunctions, that for the sake of peace and quietness, no scholar should

* *Life of Whitgift*, 458.

depart from them in his publick exercises. With whatever good intentions these articles were framed, a considerable body in the university was displeased with them, as was the queen herself, with the exercise of an act of power, infringing upon the rights of the head of the church. In despite of these injunctions, Baro, the margaret professor, preached on the 12th of January following, on the disputed topicks, and, in consequence of the opinions maintained in his sermon, was, on the 17th of the same month, convened before the vice-chancellor and heads. At this meeting the vice-chancellor declared, that several bachelors in divinity had complained of the sermon, and of the preacher's disobedience to the mandate lately sent round to every college, to put a stop to farther disputation. A long conversation then took place between the professor and the heads, on the subject of the complaint; and, in the conclusion, the vice-chancellor tells him: "It is true, I perceive, that, in your sermon, you abstained very cautiously from the words and phrases expressed in the articles; but whether you delivered any doctrine contrary to these articles, must be a matter of farther discussion. And so the meeting broke up."

Prohibited from disputing on the Lamentable articles.

There were two other meetings on this subject, on the 21st and 29th. On the latter day, the preacher, who had been advised by his lawyers not to give up a copy of his sermon, was peremptorily ordered to do it. With this order he complied on the next day, when the vice-chancellor, by virtue of his authority, ordered him to "abstain from these controversies, propositions, and articles, as well in his lectures, sermons, and determinations, as in his disputation, and *lectio in universum*." The heads now found it difficult how to proceed; they might commit themselves again, as they had done in Baro's case; and they

they were unwilling to go to extremities, untill they had heard the opinion of the higher powers. In the mean time Baro was not idle, but wrote to the archbishop and the chancellor ; and the latter, in very strong language, expressed his disapprobation of the proceedings of the committee. Such a check had its natural effect with the heads : they went on no farther with the professor in the common way, but by throwing out insinuations against him, that he was a foreigner, and busy in other persons' matters, they contrived to make the place so disagreeable to him, that in the next year he resigned his professorship, and, by retiring to London, got rid of the childish attacks of the heads of colleges *.

COVEL's CASE.

THE instance of one Covell might have been brought in here, not so much to prove the exact mode adopted in cases of this sort, for the matter seems to have been hushed up, as to shew, that they had no idea, in those days, of calling a man under the statute, on sermons, into the vice-chancellor's court. The vice-chancellor informs the chancellor, that this Covell, fellow of Christ college, had inveighed, in a sermon, preached some time in December 1595, against the nobility, and in some sort also the bishops ; that he sent for him to answer to these points, and that he now wrote to his lordship both for want of sufficient assistance of heads of colleges, and because " he could not as yet, by way of counsel and persuasion, induce the said party to make voluntary, convenient, and publick satisfaction." He gave the same information also to the archbishop, who would have sent for Covell to Lambeth : but the vice-chancellor dissuaded him from this point, by suggesting that so severe a measure might occasion discontent, as being a breach of the uni-

* Life of Whitgift, iv. 17. 18.

verity privileges; and that he would rather try, by himself, and the heads in the place, to bring the offendant to a voluntary satisfaction*.

Observations on preceding cases.

From the above related cases, it was presumed, that the proper mode of acting under a very plain statute could not be doubted. They followed within a few years after the granting of the statute, and there appears in them nothing like the process of a vice-chancellor's court. There is not an accuser, nor an open examination of witnesses: they want the formality of accusation, defence, proctors, publick summing up, and sentence of the judge. No appeal was thought of, except in the first case, and then properly denied, because there is no authority in the statutes for an appeal from a meeting of vice-chancellor and heads to the senate of the university. If there had, indeed, been any ground for this appeal, must it not, in those times of ferment, when the senate was little inclined to assent to the authority of the heads, have been frequently claimed? but the persons likely to fall under the penalty of the statute, considered themselves as in a situation to gain relief from their chancellor or the archbishop. The forms of recantation also express specifick opinions, and these opinions were all advanced in sermons. But to make the matter still clearer, a more recent case was brought forward; and, as in this century the same mode of proceeding was adopted as prevailed in the reign of Elizabeth, there is every reason to believe, both from the words of the statute, and the authority of precedents, on which modern lawyers dwell so much, even when they contradict the law, that a supposed offence against the statute on sermons was never, till the late instances, thought to be cognizable in a vice-chancellor's court.

* 4. F. 6. Whiggitt, p. 481.

WHISTON'S CASE.

ON October 22, 1710, William Whiston was summoned by an esquire bedell to appear before the vice-chancellor on the afternoon of the next day. In obedience to this summons, he went with a friend to the vice-chancellor's lodge, when, his friend not being permitted to accompany him farther, he was conducted into an upper room, in which were present the vice-chancellor, nine heads of colleges, and the university registry. A book of sermons was immediately put into his hands, and he was required to own it; but, on his refusing to answer such questions, the university printer was sent for, who could, however, say nothing to the purpose, and no other witnesses were called, relating to this publication. The depositions of several members of the university were then read, stating, that in a lecture in one of the parish churches, Whiston had asserted, "There
 " was but One God; and that God the Father only was
 " that one God; that the Father was in all the antient and
 " primitive creeds mentioned to be the only God; that
 " the Son was indeed exalted above all creatures, and
 " made a partaker of many divine excellencies and per-
 " fections; and as such he was to be worshipped with
 " a sort or degree of divine worship." Similar opinions were deposed also to have been advanced by him at a coffee-house, in a meeting of the ministers of the charity schools. To these depositions Whiston said nothing, requiring only time for his defence, and copies both of the depositions read to him, and the statute, which he was supposed to have offended; subjoining also a solemn address to the company, on the nature of christian benevolence, and the certainty of its appearance one day before the tribunal of Christ, which most probably was
 looked

looked upon by these guardians of religion as marks of his simplicity, and words without meaning. The copies of the statute and the depositions were readily granted to him; the request for time afforded matter of long debate, during which he had withdrawn; and on being finally called in, the ensuing Wednesday was appointed to him for farther proceedings. Receiving another summons to attend on Wednesday, he made his appearance again at the vice-chancellor's, "but now in a lower parlour of the same lodge, none being present but his judges "as before," the absence of two former heads being compensated by the presence of others. They now put into his hands a paper of opinions, which they ordered him to retract on the Monday following, or to expect a rigorous execution of the statute. The paper delivered was as follows :

"Positions published and spread about in the university of Cambridge by Mr. Will. Whitton, contra religionem, &c. Stat. Acad. 45.

1. * "That the Father alone is the One God of the christian religion, in opposition to the three divine persons, Father, Son, and Holy Ghost, being the One God of the christian religion.

"This position is contrary to the 1st, 2d, and 3th of the 39 articles, and to the Nicene and Athanasian creeds.

2. "That the creed commonly called the Creed of St. Athanasius, is a gross and antichristian innovation and corruption of the primitive purity and simplicity of the christian faith among us.

* Vid. *Positio* disputat. Vid. *Sermones and Essays*, &c. p. 27, l. 17. to 23. p. 215, l. 3, 4, 5, 6, 7, 1, 2, 3, 4, 11, 24, 25, 26. Mr. Thackeray's *Discourse*. Mr. Hagner's *Discourse*. Mr. Tooke's 1. Mr. Aldrich and Mr. Angell's *Depositions*. Vid. *Serm. and Essays*, p. 276, l. 21. to p. 278, l. 10.

"This

“ This position is contrary to the rubrick before the said creed, and the 8th article.

3. * “ That the canon of the scripture, the rule and guide of a christian’s faith and practice, is that contained in the last of the ecclesiastical canons, ordinarily stil’d apostolical: which all along appears to have been the standard of the primitive church in this matter. I mean as including all the books we now own for canonical, and also the two epistles of St. Clement, and the constitutions of the apostles by St. Clement: to which the pastor of Hermas is to be added; as well as we have already added the apocalypse of St. John.

† “ That the doctrine of the apostles appears to be a sacred book of the New Testament, long lost to the christian church.

“ These two positions are contrary to the sixth of the 39 articles.

‡ “ Mr. Whiston undertakes to prove clearly, that the apostolical constitutions are the most sacred part of the canonical scriptures of the New Testament.

§ “ Mr. Whiston asserts, that the doxology, current in all these latter ages, “ || Glory be to the Father, and to the Son, and to the Holy Ghost,” was not the true christian doxology.

“ This position is against the doxology received and established in the publick liturgy.

Dated October 25, 1710.

* Vid. Serm. and Essays, &c. Note (1) p. 296.

† Proposals, &c. 1 Side Vol. III. l. 10.

‡ Proposals, 1 Side Vol. II.

§ Vid. Postscript, p. 47. l. ult.

|| Vid. Thackham, his Deposition.

“ This paper was delivered to Mr. Whiston, the day and year above-written, by Mr. Vice-chancellor’s order.

Witness my hand,

ROBERT GROVE.”

Protest. Against this mode of proceeding, Whiston first read, and then delivered in a protest, stating his surprize, that they should not have conferred with him, as was formerly the usage, on his opinions; and that no one, through christian charity, had endeavoured to convince him of his errours. Many, on the contrary, attempted to undermine him; at one time, talking of him as a publick enemy to be expelled by grace; at another time, to be prosecuted in the ecclesiastical courts, or at the assizes: then the opinion of counsel was taken on the propriety of convicting him of heresy, and expelling him by Lucas’s statutes; and now a remote university statute was thought of, which could not, in the present instance, be applied with justice. This statute related to publick sermons, and similar publick acts and lectures before the university; but he had never preached before the university, nor performed divinity exercises; and the only lectures he had given, were mathematical. With respect to his sermons in the parish church, he conceived himself amenable only to the bishop of the diocese; and books published in London, and private discourses elsewhere, could not be punishable by this meeting, since the crimes must be done publicè docendo, tractando, vel defendendo, in publick and solemn sermons, lectures, or disputations, before the university. He complained also, that, in so important a business, the chancellor had not been consulted, and that he had been so privately convened and interrogated, and, saving therefore to himself the liberty of mak-
ing

ing farther objections to their proceedings, he sum'd up his protest in the following articles :

1. " That I am charged with breaking that 45th statute, which I have been incapable of breaking, because it only concerns such publick university exercises as I have never performed.

2. " That the place where most of the words are pretended to have been spoken, St. Clement's church, is utterly out of the jurisdiction of the university, and so no ways within this statute.

3. " That the want of the specification of the time, or the too loose specification of it, renders most of the depositions of no value.

4. " That words charged at so great a distance of time, cannot be sworn to so particularly as is necessary to affect me.

5. " That words spoken in private conversation, or at a coffee-house, or (written) in a private letter, can no way be within this statute.

6. " That no books printed and published at London, can be within this statute.

7. " That I ought to have been *convened publicly in the consistory*, and evidence fairly there produced against me in an open court ; and not privately in a chamber, been asked many ensnaring questions, with the exclusion of even a single friend, who was willing to have been there to assist and direct me.

8. " That

8. "That any prior determination of the sense of this statute, before I have had council allowed me, or legal advice taken about its true extent and meaning, is of no force at all against me.

"And I desire and demand that I may have time given me, and council allowed me to argue the validity of these exceptions.

"October 25, 1710.

"WILL. WHISTON."

Exhorted to re- Little attention was paid to this protest. The vice-chancellor gravely exhorted the protestant, under pain of condemnation on the following Monday, to leave his errors, and return to the church of England; and perceiving, after a little time, that he began to draw some of the heads into farther arguing and reasoning about these matters, the vice-chancellor took one of the candles and conducted him out of the house.

Banished. On the Sunday following, Whiston received a summons to attend a meeting of the vice-chancellors and heads on the next day; from which, at first, he determined to absent himself; but afterwards altering his mind, he appeared before the heads, now twelve in number; and being asked by the vice-chancellor to retract his errors, he read a protest to them against all their proceedings, which he desired might be entered upon the records of the university. He then took his leave; and the following act, afterwards made publick, gives the determination of the meeting:

“ October 30th, 1710.

“ *At a meeting of Mr. Vice-chancellor, and the Heads of colleges in the university of Cambridge, in the vice-chancellor's chamber, in king's college, in the said university.*

“ Whereas it hath been *proved before us*, that William Whiston, master of arts, mathematick professor of this university, hath asserted and spread about in Cambridge, since the 19th day of April 1709, divers tenets against religion received and established by publick authority in this realm, contrary to the forty-fifth statute of this university; and whereas the said William Whiston being required and exhorted by Mr. Vice-chancellor, to confess and retract his error and temerity in so doing, did refuse to make any such confession and retractation; it is therefore agreed and resolved by us, the vice-chancellor, and heads of colleges, whose names are here underwritten, that the said William Whiston hath incurred the penalty of the foresaid statute, and that he be banished from this university according to the tenor of the same: C. Roderick, vice-chancellor; Jo. Ellys, Humf. Gower, Hen. James, S. Blithe, Joh. Covel, Jo. Balderston, Gabr. Quadring, Tho. Richardson, Ch. Ashton, Bardsey Fisher, Edw. Lany. Unde venerabilis vir Dr. Roderick, dominus procancellarius, assidentibus & consentientibus Johanne Ellys milite, Doctore Gower, Doctore James, Doctore Blithe, Doctore Covel, Doctore Balderston, Doctore Quadring, Doctore Richardson, Doctore Ashton, Doctore Fisher, Doctore Lany, collegiorum præfectis, sententiam ferendo decrevit, declaravit, & pronunciavit prout sequitur. In the name of God, *Amen.* I Charles Roderick, vice-chancellor of this university, do decree, declare, and pronounce, that Mr. William Whiston, mathematick

mattick professor of this university, having asserted and spread abroad divers tenets contrary to religion received and established by publick authority in this realm, hath incurred the penalty of the statute, and that he is banished from this university."

"Lata fuit hujusmodi sententia per dictum dominum procancellarium, presente me Roberto Grove, not. pub. & almæ universitatis prædictæ registrario *."

Treatment of
Whiston accounted
for.

The severity, with which Whiston was treated, is easily accounted for. About that time the nation was, by Sacheverell's trial, alarmed with the cry of danger to the constitution in church and state; that bigot had received support from administration and the tories in general; and motions were made even in parliament for the suppression of irreligion and impiety. As Whiston's case is of great importance, the observations made upon it by one, whose integrity and knowledge are indisputable, and by whose friendly assistance every difficulty, in the present question, has been easily surmounted, will place the subject in the clearest point of view, and be highly satisfactory, it is presumed, to every impartial reader.

QUESTION.

Supposing Mr. Frend, by the publication of his pamphlet, to have offended against the statute de concionibus; was he on that account rightly cited to appear in the court of the chancellor, masters, and scholars, commonly called the court of the university, or of the chancellor, or vice-chancellor?

* Appendix to an Historical Preface to Christianity Revived, by W. Whiston, 1711.

ANSWER.

The affirmative side of this question can only be maintained by shewing, that such citation was agreeable to custom and precedent in like cases. The last instance of a person censured under that statute, occurred in the year 1710. In the month of October, in that year, the Rev. William Whiston, M.A. was banished from the university; and as there is no reason for imagining, that in the mode of proceeding against him, any deviation from ancient practice took place, either through ignorance or design, that mode may fairly be considered as the measure of former proceedings, in cases of the same kind, and the rule of future ones.

Now there are several circumstances in Mr. Whiston's account of his banishment, which are totally irreconcilable with the idea of a trial in the court of the university; but are very consistent with that of a private judgment by the vice-chancellor and other heads of colleges.

1st. The court of the university secures the attendance of the parties, during its continuance, by one citation: Mr. Whiston received three distinct summonses by a bedell; that is one each time his attendance was required; and it is observable, that two of the three were on *Sundays*.

2ndly. The court of the university is a publick and open court: it is opened, adjourned, and dissolved by proclamation, the yeoman bedell performing the office of cryer. Mr. Whiston carried with him a single friend to the vice-chancellor's lodge; but was obliged to appear before the vice-chancellor and heads *alone*.

3rdly.

3rdly. The court of the university compels the attendance of witnesses. When Mr. Whiston refused to avow himself the author of a book, he was told, that the vice-chancellor would have an order from the chancery to oblige the bookfeller to attend.

4thly. The order of proceeding in the court of the university, is by citation of the parties, exhibiting the charge or articles, and swearing the witnesses. But the depositions of the witnesses against Mr. Whiston, were not taken in his presence, but at a meeting of the vice-chancellor and heads, which took place before he was first summoned to attend. This appears both from Mr. Whiston's own account, and from the paper written by the registry Grove.

5thly. Mr. Frend's sentence is said to have been passed at a *court* holden; Mr. Whiston's at a *meeting* of the vice-chancellor and heads.

6thly. A sentence passed in the court of the university, being publicly delivered, does not require the attestation of a publick notary or other officer: that passed on Mr. Whiston was attested by Grove, publick notary and registry of the university.

7thly. For the same reason the publication of such a sentence in any other part of the university is unnecessary. But publication was made, by a bedell, of the sentence passed on Mr. Whiston by the vice-chancellor, &c. in scholis physcis, on the 2d of November following.—The register of the university has not been yet examined with respect to this fact, but there is no reason to doubt it.

The language of some parts of Mr. Whiston's account*, might certainly be produced in favour of the affirmative side of the question; but the facts it furnishes, must be allowed to form a strong argument in support of the other side.

There are two considerations that ought to give weight to any mode of proceeding authorized by the vice-chancellor and heads in 1710. They lived near the times, in which the statute had been frequently executed; and they had one mean of information respecting the earliest instances, which is not now enjoyed, as they were possessed of a book, called *Liber Utinam*, containing those instances, which has since been lost.

DUCKET'S CASE.

DUCKET's case was brought forward, to shew the difference of proceeding in general cases against religion, and the particular one under the statute so often mentioned. Ducket had declared himself an atheist. For this crime he was summoned on the 17th Feb. 1738, to appear in the vice-chancellor's court, and on his appearance on the next court day, on the 23d of March, with the accuser, or, as he is called, the promoter, Mr. Eglington, the court adjourned, on account of Bentley's indisposition, from the Consistory to Trinity college — There the accusation was formally laid; evidence was

* The attorney general wished to take advantage of Whiston's complaint of the secret mode of proceedings; but his ignorance of the ancient practice and its propriety is no argument against them. The facts are the great points to be considered in this and the preceding cases which concur in pointing out Whiston's error, an error very likely to be made by a man little inclined to investigate the proceedings either of vice-chancellor's courts, or consistorial meetings.

brought; and the vice-chancellor, on summing up the whole, declared Ducket guilty, convicted of the crime of atheism, and, with the consent of the heads, expelled him the university. Here every thing was transacted in legal form; no recantation was proposed or thought of. For a prophane and blasphemous libel, entitled David's Prophecy, Waller bachelor of arts of Trinity college was summoned to appear in the vice-chancellor's court on the 25th of June 1752, on the accusation of Zachary Brooke, a fellow of St. John's college, and treated in the same manner.

AFFIDAVITS FROM THE UNIVERSITY.

The application to the court of king's bench was made in the Easter term of 1794, when a rule was granted for the university to shew cause, why William Frend should not be restored to those privileges and franchises, of which he conceived himself to have been unjustly deprived; and in consequence certain persons were appointed in the university to transact the business, under whose inspection affidavits made by doctors Colman, Farmer, and Kipling, were brought forward, which seem to confirm in a still stronger manner what has been advanced in the preceding pages.

Affidavits of
Colman and Far-
mer.

The affidavits of doctors Colman and Farmer ran nearly in the same words, stating, That they had been the former twice, the latter once vice-chancellor; that they had resided forty years in the university, and did not know of any court of the vice-chancellor and heads of colleges distinct from the vice-chancellor's court, which was held at the discretion of the vice-chancellor for the time being

in his lodge or chamber, or in the consistory, law schools, or in any other publick place, nor of any jurisdiction, which the vice-chancellor and heads of colleges possess or exercise distinct from that which the vice-chancellor possesses and exercises in his court; and that it is made necessary by the statutes of the university, and has always been the usage of the said court, as far as they knew, for a majority of the heads of colleges to assent to the vice-chancellor's sentence of expulsion.

Remarks on foregoing affidavits.

These learned and pious gentlemen may have told the truth, as far as it relates to themselves, for who can take upon himself to measure the extent of their knowledge: but they unfortunately forgot to state, that not a single case had occurred within their memory of a person being punished under the statute in question; for Whiston was banished many years before either of them was in existence. They shelter themselves too perhaps under the word Court, not considering, that both of them have been frequently present at meetings of the vice-chancellor and heads, in which much academical business is transacted, such as the interpretation of statutes, and that monstrous usurpation, the making of decrees in matters of discipline. The question is, whether a case cognisable by the statute de concionibus is to be decided in such a meeting, or in an open court * as is that of the vice-chancellor. Of this question their long residence in the university did not permit them to decide, for no such case had fallen within their experience. Their oath upon a matter of opinion

* To make their oath of use in this case, they should have sworn, that the vice-chancellor could hold his court in a private room in his lodge, to which none but the culprit, the registry and the heads, as in Whiston's case, had admittance. In Duckett's case, the court was held in the accustomed place of judicature, and from thence adjourned, on account of the illness of Bentley, to a room in his lodge, equally on this occasion publick.

of this sort can have but little weight, as a decision depends not upon their oath, but the meaning of the statute, the comparison of it with similar statutes, and the precedents alledged on both sides *.

Kipling's affidavit. Kipling, the promoter, made affidavit, that he had examined the statutes and other papers of the university, from which he had extracted the statutes granted in the first and twelfth years of Elizabeth on the office of vice-chancellor, also the statute de concionibus, and the cases of Rush, Adams, Whiston, Waller, Duckett, Latham, and two other scholars.

RUSH's CASE.

SOME time in September 1609, probably the 10th †, Rush offended by a sermon preached at St. Mary's, and after a summons he appeared on the 15th of the same instant, before a meeting of the vice-chancellor and heads, in

* It is curious to observe in what manner a person, who labours under the suspicion of speaking or acting against the prejudices of the ruling powers, is treated by even the inferiour agents of the law. In the reports of this case, given by Charles Durnford and Edward Hyde East, it is remarked, that affidavits "were filed by the vice-chancellor and several other respectable members of the university, some of whom had resided there for forty years." On reading this, one would suppose that there had been plenty of affidavits upon this occasion; whereas the truth is, that they were signed only by three persons, Colman, Farmer, and Kipling, who must be respectable men, all respectable men, since the title has been conferred upon them by Charles Durnford and Edward Hyde East.

† It is said the 10th, as the MS. is not very clear in this place. This and the following cases are taken from the copies of Kipling's affidavit delivered by the university attorney, to the attorney on the other side.

the chamber of Dr. Jigon the vice-chancellor. In this case there was no accuser: the vice-chancellor asked Rush, whether he had his late sermon written or not, and on answering that he had it not, and afterwards confessing that he had the most part of it, and in a jesting manner saying, that he wished it were worth their worships' sight, he was admonished by the vice-chancellor to bring "his last sermon preached in St. Marie's, penned so near as possible he could in the very words he Mr. Rush then and there uttered it, and so as he may take his corporal oath, that it is the same he then preached, soe neare as he shall know or believe, upon the second friday in the term in the consistory," there to expect the further progress of this enquiry. On the 17th he appeared again in the same lodge, and was "charged by Mr. Vice-chancellor and his assistants with many uncharitable speeches, uttered in his funeral oration in Christ's colledge, tending to the disgrace and discredit of Mr. Doctor Barwell deceased, and also with other matters then by him uttered." To this Rush said, "That he did believe, if any conscionable man had heard him, he would thinke the better of him for it, and not the worse." The vice-chancellor then admonished him three times to deliver up the sermon in writing, which he expressly refused to do, and for contumacy was ordered into confinement till he should produce his sermon*. On the friday above-mentioned, he appeared in the custody of one of the esquire bedels, and then delivered a paper, which he declared upon his oath to be "the trewe copie of his oracion uttered at Mr. Doctor Barwell his funerrall, so farr as he

* In the margin of the paper sworn to by Kipling, it is observed, that on the 24th Rush had been admonished in the vice-chancellor's chamber, to deliver a copy of his sermon; and from the confused manner in which the whole case is related, it is evident that the business could not have been transacted in a court of law, where there would have been a regular accusation, and each day's process would have been distinct.

“ doth know or believe ;” and being now asked for his sermon preached at St. Mary’s, he delivered a book, of which, because he said “ that Mr. Vice-chancellor and “ his assistants could not well read it without directions, “ and for that himselfe made some doubt, that it was not “ there written in all points as he uttered it in St. Marie’s,” he was treated as contumacious, admonished to bring this sermon ready written on monday next, and in the mean time remanded into custody. On that day he appeared in the consistory, gave his consent to the time, place, and judges, and renounced all advantage to be derived from the want of a sufficient number of heads, and having delivered a faithful copy of his sermon was discharged out of custody ; but, as it appeared to the meeting, “ that he had wronged manye by his sermon preached, “ and by his oracion uttered at the sayd funerall, and for “ that it was to be feared, now he had his libertye, he “ would or might again offend by publickly preaching, or “ in open assembly,” and for other causes, he was suspended by the vice-chancellor in the name of the Father, etc. from all his degrees, and prohibited from praying or preaching within the university, till the suspension was taken off, and the farther consideration of the sermon was defer’d to the 27th of October. On that day the heads met again, and Rush was interrogated on various points in his sermon, and after much conversation* he promised to stand by their decree ; “ so they urged “ him not against his conscience, to saye blacke was whyte “ or whyte blacke :” upon which he was admonished to bring on the next day in writing a speech to be publickly delivered by him in satisfaction of the several points with which he had been charged. In the morning he appeared before the meeting, but did not satisfy it, and on his ap-

* *Nulli in loca ventilatis.*

pearance in the afternoon it was decreed, on a similar submission as he had made before, “ that he should on
 “ the morrowe immediately after the afternoon sermon,
 “ in St. Mary’s church, in the minister’s pew or seat,
 “ there publicly and openly reade with an audible
 “ and loude voice, the whole contents, which shall be
 “ the schedule” delivered to him by the vice-chancellor
 before eight in the morning,

At eight o’clock on the next morning the paper drawn up by the meeting was delivered by the vice-chancellor into Rush’s hands, in the presence of the notary publick ; which Rush refused to read, “ saying, he had Mr. Perkins
 “ and Franciscus Junius of his side, and therefore he
 “ would never ly against his owne conscience.”

In consequence of this refusal he was bound with his sureties, John Atkinson and Thomas Perkins, in a recognisance to appear within four days after a summons left for him at his college ; and on the third of January following, he appeared again at a meeting of the heads, when he was admonished thrice by the vice-chancellor to read the contents of a paper, then put into his hands, in the forenoon of the next Sunday, “ if there was no sermon in the afternoon ; or if there was a sermon in the afternoon, on the Sunday following, immediately after the sermon, before the psalme be songe, in the minister’s pewe, in the bodye of the church of great St. Marie’s.” This recantation drawn up in the following words he refused to perform.

Recantation refused. “ Whereas many christian auditors, wyse, godly, and religious, have beine offended with many things which I have not longe since uttered in a sermon in this place, justley reprehending not only my greate indiscretion, presumption, uncharitableness, rash and
 bould

bould censuring, but also some strange and erroneous opinions I then was taken to deliver : I am now come in the same publique place (after sundrey conferences had with divers grave and learned divines of this universitie) to acknowledge my fault and to make satisfaction.

“ And first, where in my prayer I used every unreverent and reproachfull speech agaynst the cleargy or some of them, terminge them the *gorbellyd clergye*, and also some offensive speeches which might be taken to touch authority or some attendinge in court, callinge them *develisb parasjts* in flatteringe and attributyng over much to some in higher place : upon better advisement, I now acknowledge my presumptuous bouldnesse therein.

“ Further, in that I did then deliver these opinions in this manner and words, viz. That St. Paule and Moyfes did fault and err in their desires, it cominge from the surge and source of a passion too earnest and hott, and not sufficiently bounded with the trew limits of pure charity, and also even our saviour Christ’s prayer (*Father, if thou wilt this cup passe from me, but not my will but thy will be done*) came from nature, and without reason attendinge his understandinge all the whyle otherwise buyfied, and his resonable deliberacion not concurringe therewith (for it is not necessarye that the resonable mynde should concurre with the tonge always, men speaking some tymes in their sleepe, and parats also learninge that facultye), and that his mouth with all the instruments of speech were wryed as it werre, and wrested to utter the summe and substance of his naturall instinct and inclynacion : and further, that our saviour Christ’s prayer, though it were uttered by a person resonable, yet it was nothing in substance but nature’s desyre and prayer, it directly and originally being the proper cause of it : and further, that the words of Christ were as the words of a man in sleepe,
and

and yet further, whereas in my confutation of Mr. Beza's judgment (being that the prayer of our saviour Christ came from a reasonable will), I uttered these words in answer: as I take it, it cannot stande; for how could he without tediousse and untimely troublinge and obtunding his father's eare (as I may soe speake) *pray that the cupp should pass from him?* I now, upon better deliberacion, doe with grieve and sorrow harte confesse before God and his angells and his whole assembly, that I have greatly erred in my sayd opinions publicly delivered, and specially touching the poynts about the most holy, earnest, meritorious, and heavenly prayer of our saviour, in that his bitter agony suffered for our sinns, wherein my said speeches were not only erroneous, rash and presumptuous, but also such as might be taken to be dishonourable to our saviour, impious and profane, givinge just scandalle both to such as then heard me, and also further to whome the same and report thereof hath come.

“Wherefore I humbly beseech, first, almighty God, and next, you all (whome I have offended), to forgive me, (promisinge by God's grace to be more vigilant and circumspect hereafter) in that I shall publicly utter either in this or any other place.

“Which that I may the better performe, I humbly desire you to praye for me, and now to joyne with me in that most absolute forme of prayer which our saviour Christe himself hath taught us.”

Sentence. The final meeting was now held, and, on the 8th of January 1609, the vice-chancellor, in the presence of eight heads, passed sentence upon him for his refusal, in the following words:

“Whereas you Nicholas Rush, late master of arts and fellowe of Christ’s colledge in this universitie of Cambridge, have preached and delivered in St. Marye’s church in Cambridge aforesayd, the 10th of September last past, a certayne doctrine judged by me deputye vice-chancellor and the greater parte of the heads of colledges of the said universitie *contra religionem seu ejusdem aliquam partem in regno Angliæ publicâ autoritate receptam et stabilitam*; and being thereuppon covented before me John Duport doctor of divinitye, and deputye, and the heads, and also vice-chancellor of this universitie of Cambridge by me, with the consent of the greatest parte of the heads of colledges, strictly charged, injoynd sub pena juris, at a certayne daye, tyme and playce, to revoke and recant the sayd false and erroneous doctrine according to a prescript for me, and manner of words heretofore judicially to yourselfe exhibited; and because you the sayd Nicholas Rush have perempterely refused so to doe in manner and form so to you prescribed, I therefore the sayd vice-chancellor’s deputye doe by that authoritye is to me comitted, and by vertue of the statute in that behalfe provided, viz. *Libro statutorum academix, cap. 45^o, titulo De concionibus*, by the consent of the greater parte of the heads of colledges aforesayd, doe pronounce and declare you the sayd Nicholas Rush incidisse in penam in statuto præ mentionatam, and to be utterly precluded and shut out of the sayd universitie and Christ’s colledge, according to the contents and effect of the sayd statute, and doe soe accordingly *exclude and banishe* you by mye small sentence or decree, which I give and publishe in this wrytyng.

Lecta & lata 8^o die mensis Januarij 1609,

Per me JO. DUPORT deputat. vicar.

Ita testor JA. TABERN. registrar.

In present. n. *Joh. Wynter*, bedelli, testis rogati.

Reflections on Rush's
case.

How this precedent can justify the proceedings against William Frend, it is difficult to perceive ; for, 1st. It relates to a sermon preached at St. Mary's. 2d. There was not a promoter. 3rd. Rush was ordered to recant according to a particular form, which he refused to do, and yet sentence did not follow, as it must have done in a court of justice. 4th. The recantation finally proposed to him, specified his errors. 5th. The sentence was evidently pronounced in a private meeting, for not only the registry signs it, but a bedell is besides requested to be a witness to it.— 6th. The exclusion from college is mentioned in the sentence, as well as banishment from the university.

ADAMS'S CASE.

IN the case above related, the promoter has brought an instance of a person, on refusal to recant, banished from the university. The next produced by him is more full in some parts, though the supposed offender was not punished. On the 17th of July 1637, a meeting of the heads was held in the consistory, in which it was decreed, that Sylvester Adams, M. A. of Peterhouse, should be warned to appear on that day month, and bring with him the sermon he had preached at St. Mary's on the 25th of June. In consequence a summons was left at his college, but he did not appear at the next or subsequent meeting, to which the business was defer'd ; and it was then farther put off to the 9th of October, when he appeared, and excused his absence, on the ground that he had not received any warning from authority, saying at the same time, that his sermon was either in Suffex or lost. Upon which he was admonished to bring a true copy of it, such that he could swear to, on that day month.

Questions in the
consistory.

On the 6th of November he brought his sermon to the meeting, and took his oath, that the contents were so far as he knew the whole of what he had delivered at St. Mary's. On the 4th of December was another meeting, in which he was admonished to deliver up a copy of his sermon without quotations; and was asked first, Whether he held that "the confession of all knowne sins unto a priest is the only ordinary revealed meanes for salvacion?" To which he replied, that he did not hold it. A second question was then proposed to him, Whether he held "that God doth not ordinarily pardon such knowne sins before mentioned, without such confession as is before mentioned?" To this question no answer appears.

Heads cannot
agree.

At the next meeting on the 11th of December, he delivered another copy of his sermon, and was admonished to appear again on the Saturday following. On his next appearance, the "vice-chancellor was intreated to conceave a forme of acknowledgement, which should be propounded to Mr. Adams, to see if he would voluntarily undertake it." At the next meeting, on the 18th, the vice-chancellor objected to Mr. Adams certain opinions, maintained in his sermon, upon confession to a priest. Adams replied, that he had said nothing in his sermon, which he believed to be contrary to the doctrine of the church of England. A recantation was then read; and the question was put, "Whether the recantation read be a fit recantation, to be made by Mr. Adams in regard of the matters delivered in his sermon, whereof a copy is delivered?" Upon this question the votes were very much divided; four of the heads only voting in the affirmative, four positively rejecting the recantation, four voting for longer time to be given to Adams, and one declaring that as yet he saw no reason at all for recantation. Upon this difference of opinion,

Adams was admonished by the vice-chancellor not to quit the town without his leave.

Recantation proposed by the vice-chancellor not admitted by the heads. A long interval now ensued, in which most probably many attempts were made in private, to bring the heads to some better agreement; and on the 2d of March another meeting was held, in which Adams appeared, and the vice-chancellor, having read a form of recantation, asked him first, Whether he would voluntarily submit to the said recantation? but he expressly refused to subscribe it. He was then asked again, Whether he would acknowledge the said recantation? but he persisted in his refusal. The vice-chancellor then delivered his opinion and sentence, in writing, subscribing it with his own hands, in which he was followed by six of the heads; and five of the heads subscribed their names too, but in the negative. The paper was drawn up in the following words :

“ At the consistory Martij 2^o. 1637, presentibus. Doctor Brownrigg, procan. Doctor Ward, Doctor Collins, Doctor Bambrigge, Doctor Paske, Doctor Bachcroft, Doctor Beale, Doctor Cosen, Doctor Lancy, Doctor Love, Doctor Sterne, Doctor Holdsworth.

“ I having diligently perused the sermon of Mr. Adams, fellow of Peterhouse in this university, concerning the necessity of confessing of our sins to a priest; and having sundry times convented him thereupon, and finding him still obstinate in his false doctrine, I doe sentence him so far forth as is in me to recall his error, and give satisfaction to the church, by the publique and audible pronouncing of this forme here underwritten :

“ Whereas

“ Whereas upon Sunday the 25th of June last, in my publique sermon upon these words, St. John, xx. 23. *Whose sinnes ye remitt they are remitted, and whose sinnes ye retaine they are retained*, I delivered this doctrine, That a speciall confession unto a priest (actually where time or opportunity presents itselfe, or otherwise in explicit intention and resolution) of all our sinnes committed after baptisme so farre forth as we doe remember is necessary unto salvation, not only necessitate, butt also necessitate medij, so that according to the ordinary or revealed means appointed by Christ there can be no salvation without the aforesaid confession: upon more mature thoughts and better information, I doe finde that this doctrine then delivered was both erroneous and dangerous, having no warrant from the word of God, and crossing the doctrine of our church, as may appeare by her liturgie in the second exhortation at the communion, and in the visitation of the sick, and in the second part of the homilie of repentance. As therefore in general I doe acknowledge in the words of the aforesaid homilie, that it is most evident and plaine that this auricular confession hath not his warrant of God's word, and that therefore, being not ledde with the conscience thereof, if we with fear and trembling, and with a true contrite heart use that kind of confession which God doth command in his word, namely, an unfeigned confession unto almighty God himselfe, then doubtless (as he is faithful and true) he will forgive us our sinnes, and make us cleane from all our wickedness; so in the case of a troubled or doubtfull conscience, I doe conforme my opinion unto the direction of mother church, which, in her liturgie, both exhort and require those whose conscience are troubled with any weighty matter, to a speciall confession, so that they who cannot quiet their owne conscience, are to repaire to their owne or some other minister, and being a minister of God's word, to open to him their conscience, that so they may receive such

ghostly counsell advise and comfort, as their conscience may be relieved, and by the minestry of God's word they may receive comfort, and the benefitt of absolution, to the quieting of their consciences, and the avoiding of all scruple and doubtfullness. Butt it is against true christian liberty, that any man should be bound to the numbering of his sinnes, as it hath been used heretofore in the times of ignorance and blindness. 'This I doe acknowledge to be the doctrine of the church of England concerning confession; and to it I doe examine, subscribe, and am heartily sorry for whatt ever I have delivered to the contrary."

" And if Mr. Adams refuses to make this publike acknowledgement of his error, then my sentence is, that he shall undergoe the punishment which the university statutes, cap. 45 de concionibus, doe appoint to be inflicted; and I require the registor to make an act as well of this my sentence as of the forme of recantation enjoined by me, wherein he is charged with no other but his own words in his sermon, and appointed to recall his false doctrine in no other butt the words of the liturgie and homilie of mother church. 'This I require to be registred, that so it may appear that I have done my part to assert and maintaine the doctrine of our church."

Reasons of dissent. Of the heads who determined in the negative, four gave as a reason, that particular confession is not contrary to the doctrine of the church of England, and one required the qualifying of some particular expressions. Thus a recantation could not be proposed to Adams, and " Mr. Vice-chancellor did dismiss " the meetinge, but not the cause;" but it does not appear that the cause was ever resumed, or that Adams was farther disturbed about his opinions*.

From

* Charles Durnford and Edward Hyde East speak thus in their reports: " Some of the heads assented and others dissented to the recantation proposed. " Finally

Reflections on the preceding case. From this case may be clearly collected, among other things, that the form of recantation was considered as a material part of the business, and that an order to recant, without specifying the particular errors in a sermon, would have been considered as an absurdity. The next case referred to by the promoter is that of Whiston, taken from a loose paper found in the registry's office, from which nothing can be collected, which does not confirm the account given in the preceding pages*.

Waller and Duckett. The above are the only precedents brought forward for the court of king's bench by the promoter, which relate to the statute de concionibus: the others were all either mere matters of discipline, or confessedly tried in the vice-chancellor's court, and the manner of proceeding was totally different. Copies are given of the summons to Waller, and proceedings of the court, by which he was banished for publishing a blasphemous libel, entitled David's Prophecy; and from these papers it

* Finally the sentence took place, and was subscribed by the vice-chancellor and heads, which done, Mr. Vice-chancellor did dismiss the meeting, but not the cause." These accurate reporters have unfortunately forgotten to tell their readers that the recantation was indeed signed by all the heads present, but in very different senses, six being for it, and five against it, and each person either declaring positively his assent, or giving reasons for his dissent. The reporters say positively that a sentence was signed by the vice-chancellor and heads, by which if they mean a legal sentence affecting the preacher, they have grossly mistaken the case; and if they mean any thing else, they should have explained themselves in a different manner: the fact is, that the dispute was on the nature of the recantation, and no sentence could take place until a recantation, signed by a majority of the heads, had been refused. A majority not concurring with the vice-chancellor, no recantation could be demanded, and no sentence did take place. It is to be hoped, for the credit of the law, that the reports are in general more accurate, or it is time to find other reporters; and perhaps this should properly be made part of the judge's employment.

* This paper is printed, as given by the promoter, in the Appendix.

appears, that one Brooke stood forward as an accuser, that Waller confessed the crime, and without the proposal of recantation was sentenced to be banished. The papers of Duckett's case are also copied, which prove that he was accused of atheism in the vice-chancellor's court, found guilty of the crime, and sentenced to be expelled the university.

Cases from books
described.

Of what authority the contents of the papers thus sworn to by the promoter are, he leaves to conjecture; for he says only, that they are taken from books, papers, and records in the possession of the registry of the university: the following cases he makes oath are taken from two books, the one lettered on the back, Act. Cur. 1690. 1709, the other entitled in the first page Acts of Court, 1752. The first case is that of John Latham, who confessed, that he had been in a house of ill fame, for which he was suspended from all his degrees: the second that of Rutter and Osbourn, who, on confessing the charge that they were out of college at unseasonable hours in the night, and quarrelling in the streets, were also suspended from their degrees. From the extracts it appears, that these cases were determined by the vice-chancellor on the 18th of March, but the date of the year is not put down; that they were mere cases of office, ordinary discipline, or criminal jurisdiction before the vice-chancellor, and that none of the heads were present. The next and final case is that of an undergraduate and a bachelor of arts, prosecuted by an inhabitant of the town, for a riot on the night of the 28th of June and morning of the 29th, 1780, and indecent behaviour towards his daughters. For a variety of offences proved on the young men, by several persons examined in court upon oath, the vice-chancellor on the third day of hearing inflicted the following punishments: 1st, That they should be fined 6s. 8d. each for being out of college at unseasonable hours: 2d, That one should

should be confined a fortnight, the other a week, to his college : 3d, That they should ask pardon of the promoter for the disturbance at his door, and of two of his daughters for some indecent language reflecting on them as unchaste women.

Reflections on the last cases. How these cases can serve the promoter Kipling, it is difficult to conceive. On the first day, in the last case, there was not a head in court besides the vice-chancellor ; on the second, he was joined by five heads ; on the third, two only were present with him ; and if none had been present, the cause would have gone on as well. Nothing is proved, except that the same course was taken by the promoter and his cabal against the authour of a pamphlet, as against some young men for a riot. But what has all this to do with the present question ? when it is not denied, that the authour of Peace and Union was tried in a vice-chancellor's court. But it is affirmed, that he ought not to have been tried in such a court, and that no precedent can be alledged in favour of a trial in that court, under a statute, which implies a mode of proceeding absolutely incompatible with the laws of a criminal court.

ARGUMENTS OF THE UNIVERSITY COUNSEL.

UPON these affidavits the question was argued on several days, till its final determination on the 26th of November 1794. The counsel for the university were the attorney general, Erskine, Law, Graham, and Le Blanc, who contended, that in all cases of judicial cognizance before the vice-chancellor, whether sitting alone or with the heads of houses, the proceedings are in the vice-chancellor's court, of which he is the sole judge, though

in certain cases he cannot pronounce judgement without the assent of a majority of the heads : that the place of holding the court is at his own option, and, whether he takes cognisance of an offence in camera, or in the consistory, or law schools, it is still the vice-chancellor's court. The proceedings in this case were strictly conformable to the rules of the vice-chancellor's court ; a court which had existed immemorially, and taken cognisance of all offences against discipline, as well as other matters, and there is no other court of the kind in the university. This court is held in the vice-chancellor's name, is called his court ; by him the process is issued, the court is convened, adjourned, dismissed, and the sentence is given by him, and in his own name and authority. Since such a court existed long before the granting of the statute in question, the new offence created by this statute generally must be referred to this court ; for it could not be supposed, that the vice-chancellor should take cognisance of this particular offence in his private capacity*, when there were certain rules laid down for the proceedings in his court in all other matters of discipline, where he could enforce the attendance of witnesses, take their evidence upon oath, and enforce the execution of sentence.

Statutes compared. By the statute on the authority of the vice-chancellor, 1 *Edw.*, jurisdiction is given to the vice-chancellor in certain offences, without reference to his court, and yet this jurisdiction has always been exercised

* The reason is obvious. To be brought into a criminal court is in itself ignominious. A man might offend this statute without positive guilt ; he might have lapsed through an error of the head, it would have been said in former times, not of the heart : he was not therefore to be put on a par with common criminals ; he was to be won from his errors, and the proper place of doing this is evidently a private room ; and with this clue we see the propriety of all former proceeding, in which every thing was done in conversation, without the forms of a court.

in that court, though the consent of the heads to the sentence of the vice-chancellor is in order to punishment by this statute required. The statute in the 12 *Eliz.* describes the offences in a similar manner, leaving the chastisement of them, however, to the judgement of the vice-chancellor, except in all cases of banishment, and certain cases of imprisonment, in which the consent of the majority of the heads is requisite. In these cases the vice-chancellor is still the sole judge, the sentence is his, and the heads are only assessors. Now, if it is contended that an offence against the statute de concionibus is not to be tried in the vice chancellor's court, because punishment cannot follow without the consent of the heads; upon the same principle none of the other offences could be tried in the vice-chancellor's court according to the power given by stat. 1 and 12 *Eliz.*, which require the consent of the majority of the heads to the sentence: but with respect to these offences, it does not appear that they were tried in any other place than the vice-chancellor's court, or that the calling in of the heads altered the nature of the court: the statute, therefore, which required the consent of the heads to banishment in this peculiar instance, could not create any more than the other statutes a new species of jurisdiction. The assent indeed of the heads was necessary to the recantation proposed, which, however, is to be offered *jussu cancellarii*, and the party is banished *eisdem auctoritate*.

Style of the court. Of the cases mentioned in the affidavits some were clearly in the vice-chancellor's court, others related to offences under the statute in question. By comparing them together, it appears from the similarity of style in the courts, original process, subsequent proceedings, whether in camera or *conitorio*, and the form of sentence, that they must all have been tried in the vice-chancellor's court. In some cases under the statute de concionibus,

concionibus, when banishment was inflicted, some of the proceedings were at times before the vice-chancellor alone, at other times before less than a majority of the heads, without which, however, no sentence appears to have been passed. Besides these arguments drawn from the nature of the court, much reliance might undoubtedly be placed on the affidavits of two persons of long standing in the university, who never heard of any court in the university distinct from the vice-chancellor's court.

Recantation. With respect to the imperfection in the form of recantation, since no form is laid down, the mode of recanting must remain entirely in the breast of the vice-chancellor and his assessors; and since the fact had been proved*, that an offence had been committed against the statute, a form more lenient could not possibly have been devised. It cannot also be argued †, that the specific errors were not pointed out, since they appear in the record of the proceedings on which both judgement and recantation are grounded. But allowing this to have been a sufficient cause of complaint, the delegates of the university, not the court of king's bench, were the proper judges.

Imperfection of sentence. The complaint on the illegality of the sentence, because it is not exactly worded according to the statute, is ill founded; for, as the college is situated within the university, an actual exclusion of a person

* The facts said to be proved by the court were, that W. Frend was the author and publisher of the pamphlet, and that, by writing and publishing it, he had offended against the latter part of the statute; but the court never said what was the offence committed by writing and publishing the book in question, whether it lay in the offences alledged in the articles, or in other parts of the book.

† It may certainly be argued, till the court declares what articles in the charges it approves or disapproves of.

from the precincts of the university is an exclusion from his college; and this reasoning is confirmed by the affidavit on the part of the complainer, who states, that he cannot enjoy the benefit of commons, and other privileges, unless he is permitted to reside in the university. The legal construction of the words of the statute exclude him also from the college, for the effect of the sentence is to be compulsory on the college to follow it up by an order of exclusion from the college, "Let him be excluded from the college." The university is required to banish the offender from the university, and the college from its own body; for some privileges of the college may be enjoyed by an absent fellow, and of these he cannot be deprived without an order from the college. But if there had been an error in the form of the sentence, this is not the place for relief, the point can be settled only in the court of delegates.

New view of the case. These grounds of complaint appear therefore to be ill founded, and the granting of a mandamus must be resisted from another view of the case. Mr. Frend is still a master of arts: he is not deprived of any known franchise, but is solely put out of a condition to avail himself of some of the advantages of his franchise; and a mandamus cannot be granted, except where the corporate franchise itself is either taken away or suspended. Had he been imprisoned or transported by the sentence of any other criminal court, he could not have tried the legality of such a sentence, by application for mandamus, though the same advantages could have been lost in that as in the present case.

ARGUMENTS IN SUPPORT OF THE RULE.

IN support of the rule the counsel on the other side observed, that the last remark could have no weight, for a mandamus was the true remedy, when the subject had no other specifick mode of redress. Since the franchise could not be executed beneficially, the sentence of the vice-chancellor operated as a disfranchisement, and this court, having a controul over all inferior jurisdictions, was properly applied to for redress. The injustice also in the first instance need not very clearly appear; if there is ground only for doubt in the court, a mandamus must be granted: for, should it be refused, the party has no remedy; if granted, the persons to whom it is directed, may dispute the question on a return to the writ.

Nature of the
vice-chancellor's
court.

With respect to the question of jurisdiction, it is best elucidated by considering the nature and constitution of the vice-chancellor's court, and then examining the description of persons authorised to take cognisance of offences against the statute de concionibus. The origin of the vice-chancellor's court is involved in considerable obscurity, yet some certain information may be collected concerning it, inasmuch as it is recognised by the several charters granted from time to time to the university, and particularly by that of 3 Eliz. which recites the others granted by her ancestors, and is itself confirmed by the incorporating act of parliament passed in the 13th year of her reign. From these sources we collect, that it is a court of law, in which the chancellor presides as judge, or the vice-chancellor, who is to this purpose clothed with the same power and authority as the chancellor himself. It is a court of law to all intents and purposes, opened
2 with

with all the solemnities, and conducted with all the formalities, which usually belong to other courts of justice; and instituted, as Lord Mansfield seems to allow in Dr. Ewen's case, when he refers to the charter recognising its authority, for the purpose of taking cognisance of common law crimes. That it was instituted for this purpose alone, and not with a view to embrace offences purely statutable, i. e. such as would not be cognisable in other courts of law, appears as well from the circumstance of no such right being granted in any of the charters, as from considering the reason and design of these charters. The manifest design of these charters was to establish a forum domesticum, armed with a power of hearing and determining such cases as were cognisable in other courts, but in a particular manner and form, and of punishing *secundum leges et consuetudines suas*, i. e. by suspension or deprivation of degrees, *vel secundum statuta regni jam edita seu in posterum edenda*. It was erected for the convenience of the members of the university, to which they might resort in all cases in which they were parties, and to prevent the vexation and expence of being dragged into distant courts, to whose jurisdiction they would otherwise have been subject. But they could never be considered as subject to other courts, in cases of offence against their own private statutes only. Such offences every society has the power of hearing and determining within itself. The court of the university therefore, it should seem, was meant to be invested with a right only to take cognisance of those offences, which would be otherwise cognisable by some other publick court, civil or ecclesiastical.

Justification of
vice-chancellor and
heads. Now the jurisdiction under which offences against the statute *de concubinis* are to be corrected, appears to be in its nature and constitution a totally distinct tribunal: for the

words of the statute expressly declare, that whatever the vice-chancellor commands to be done, must previously be sanctioned by the concurrence of a majority of the heads. The heads therefore are clearly made an inherent and necessary part of the jurisdiction, which is to take cognisance of offences against the statute : and that no doubt may remain, it is afterwards in terms enacted, that upon a refusal of recantation, the offender shall incur the penalties of the statute, *câdem* autoritate, which must mean that which went before, because it refers to it, namely, the authority of the vice-chancellor and the major part of the heads of colleges, in whom lay the power of offering the terms of recantation. Now the heads form no part of the vice-chancellor's court, and they are a most essential ingredient in the constitution of the jurisdiction described by the statute ; and it is an indisputable principle of law, that a court, which subsists by charter, cannot be either enlarged or abridged in its powers by the operation of a bye-law. Thus, if the university had been so inclined, they could not with any success have invaded the chartered rights of the vice-chancellor's court ; and it appears from the cases that they never until now attempted to usurp such an authority. Suppose the case of a court leet in a corporation, where by charter the mayor presides as judge : an act of parliament is afterwards passed, which commands the mayor and aldermen of this same corporation, to take cognisance of certain offences enumerated in the act ; can it be pretended, that the mayor in his court leet can exercise jurisdiction over offences directed to be tried before another tribunal ?

Affidavits of
Colman and Far-
mer.

The affidavits of Colman and Farmer can have no weight with any one, who reads the statutes of the university : for in the 30th and 38th chapters a jurisdiction is pointed out of a similar nature with that under the statute de concionibus,

concionibus, which was never exercised nor conceived to be exercised in the vice-chancellor's court. Under the former of these statutes, the regents are bound to elect those persons, who are nominated to be proctors, unless a sufficient ground be alledged against them before the vice-chancellor, and be approved of by him and the major part of the heads. But it was never conceived that this complaint should be made or would be heard in the vice-chancellor's court, where the attendance of the heads was accidental. Under the 38th chapter, the mode of depriving a bedell of his office is pointed out. The chancellor in that case is to do it with the consent of the major part of a meeting, consisting of the proctors and the heads of houses; but no one ever supposed, that a bedell or person nominated to be proctor, could be subjected under these statutes to a formal trial in the vice-chancellor's court, or that the proctors could make a part of that court.

The promoter's
affidavit.

Much might be said on Dr. Kipling's affidavit; for in pointing out two statutes made in different periods of the reign of Elizabeth, he seems to intimate, that they are of equal authority: whereas the slightest comparison of them shews clearly, that the former statute was abrogated by the latter.—They run exactly in the same words to the latter part of the second statute, where a restriction is made with respect to the mode of punishing: some punishments being left to the discretion of the vice-chancellor, but others cannot take place without the consent of the major part of the Heads; whereas, by the former statute, none of these offences could be punished but with the consent of the heads. Besides, Kipling himself ascertains this point by some of the cases, which he has brought forward: for in them the vice-chancellor suspends from degree by his own authority, without any interference of the heads, which he could not do, if the first statute were in force.

and it is plain, both from the words themselves, and the uniform practice of the university, that the first statute was repealed by the second. Besides, if either of these statutes contain any thing inconsistent with the charter, such part cannot be considered as in force, because the incorporating act of the 13th Eliz. confirms the charter; and therefore every thing contained in any of the statutes, which militates against the power given to the chancellor by the charter, is by this incorporating act of parliament virtually repealed.

Precedents considered. The manner of proceeding in Rush and Adams's cases, evidently point out transactions of a private nature, not conducted in an open and publick court. Kipling does not swear, that they are taken from any books entitled *Acta Curix*, which he would doubtless gladly have done, if it had been in his power, since he points out that distinction in other cases. It does not appear, that Rush was cited by the vice-chancellor alone; and a decree of the vice-chancellor and heads is mentioned as the ground for summoning Adams. There is no appearance of crier, witnesses, or any other persons, but the vice-chancellor, heads and registry; and in Adams's case, where no sentence was passed, it is not stated, that the court broke up, but the meeting was dismissed. The same appears equally clear from the last case cited that has any relation to the statute *de concionibus*. Whiston was summoned several times, and twice on a Sunday *. Now a citation into the vice-chancellor's court supercedes the necessity of repeating the summons; and Mr. Frend received only one citation. Whiston could not carry

* The probable reason of this is, that as the vice-chancellor and heads meet together on Sundays in the vestry, before they go into the church, they then determined the time of meeting on Whiston's business; and the bedell, who attended the vice-chancellor home, went from him with his summons to Whiston.

his friend with him into the meeting; and the sentence required the attestation of a notary publick. From the instances therefore cited by the promoter, and from the most authentick histories of the university, it appears, that many have been punished for offences against the statute de concionibus, by a meeting of the vice-chancellor and heads; but not a single instance can be produced, where it is clear, that such offences have been tried in the vice-chancellor's court: on the other hand, many have been punished, and instances are allowed on both sides, of punishments in the vice-chancellor's courts, for the publication of objectionable sentiments, blasphemy, &c. but under other statutes, not under the statute de concionibus. Exclusive also of the forms and extent of powers respectively belonging to the two jurisdictions, and their different nature and constitution, their object is quite distinct, that of the vice-chancellor's court being punishment, and that of the jurisdiction under the statute de concionibus, revocation of error.

A printed book
not within the
statute.

The publication of a book is not an offence against the statute de concionibus, which is confined solely to academical exercises. Publications belonged to another jurisdiction, when this statute was given; for these a licenser was appointed by the state; and it is not probable, that the jealousy of Elizabeth would permit the heads to interfere with his office; and it does not appear, that in her reign, among the various publications deemed excessively offensive, of members of the university, one of them was brought before the cognizance of the heads. All the instances indeed produced on both sides, refer to sermons or academical exercises; and, if in Whitton's case a book was mentioned, it seems to have been intended only as a collateral proof of his opinions; for the enquiry was not pursued, whether he was the authour of it or not; the

heads had no evidence of the fact; and they proceed by the depositions made on oath of the opinions maintained in his sermons. Besides, they who drew up the articles of accusation in the case at present before the court were clearly of opinion, that a pamphlet did not come within the words of the statute, for they did not pursue the words of the statute, but those of an exploded grace*.

Recantation. The want of specifick errors being pointed out in the proposed recantation, is a ground of complaint not to be surmounted. In all the cases produced, certain specifick errors have been pointed out to the offending party; and, if Adams's case afforded so much ground of debate to the heads, it is not to be supposed, that they could have been brought to approve a recantation conveying such a general and sweeping charge as that in the late proceedings. What was the effect too of this recantation? Was it not for the authour to retract and condemn every sentence in his book †, for who was to determine what were the points which the vice-

* At the conclusion of the articles delivered in the vice-chancellor's court, are these words: "Wherefore the party promovent in this cause, prayeth right and justice to be done, and administered to him effectually, and that the said W. Friend, in regard of his great rashness and presumption in the premises, may be truly corrected and punished, as the law requires." Now the law does not require correction or punishment for any offence, however atrocious it may be against it, by the propagation of opinions deemed erroneous; punishment does not follow the delivery of opinions, but pertinacity in maintaining them with refusal to recant.

† There were nine articles of accusation, in the second of which the pamphlet is called scandalous; and a copy of it having been delivered into court with the articles, it is "prayed to be admitted as if inserted therein."—By the mode of recantation proposed, every sentence in the book might be deemed erroneous, for the publishing of it was called an offence against the statute, and no line of demarcation is drawn between the innocent and offensive passages.

chancellor and heads did, and what they did not condemn? The bishops in a former reign had a better insight into these matters; for they justly reprobated the proceedings of the lower house of convocation, in censuring a work of bishop Burnet; for they came to this resolution, "That the lower house of convocation's censuring the book of the bishop of Sarum, in general terms, without mentioning the particular passages on which the censure is grounded, is defamatory and scandalous."

Informality of
the sentence.

The last ground of complaint is the informality of the sentence, which cannot be got over by saying, that it is virtually the same as that prescribed by the statute; since in all criminal cases the direction of a penal statute must be implicitly obeyed.—The judge has no discretion, except such as is allowed by the express words of the statute, and here there is no discretion entrusted to him. The common familiar instance of an offence punishable, under an act of parliament by fine and imprisonment, proves this: the judge must inflict both, even if the fine imposed were nominal; because it is perfectly well known, that, unless he obeys the direction of the statute, the judgement is bad, and must be set aside by writ of error.

Upon the whole, if the court should entertain a doubt upon any of the points submitted to it, by granting the mandamus, the question may, unless the university should from the past discussion be convinced of the error of its heads, be more fully investigated.

DECISION OF THE JUDGES.

THE judges now separately gave their opinions, in which they were unanimous on three points, but one differed from the rest on the doctrine maintained with respect to the punishment assigned, which ought to be exactly that which the law directs. But this was immaterial, he said, in the present instance, as exclusion from college is included in the sentence of banishment; and if not, it is a ground of appeal only to be decided by the court of delegates. That the court of king's bench had power of correcting the errors of inferior jurisdictions, the chief justice asserted, must be allowed as a proper general rule; but it must be taken *cum grano salis*, for it was intimated in Bentley's case, "that if the bishop of Ely had acted as general visiter, this court would not have entered into a discussion of the case below*." That there should also be an appellate jurisdiction to reform the errors in the judgement of the first court, was stated in the same case to be essential to the good administration of justice; but in this case the jurisdiction of the first court seems to have been allowed, for the party applying for a mandamus seems to have admitted it, by appealing

* Mr. Reeve, counsel for Dr. Bentley, admitted, that, if the university had returned to the writ, that the king was their visiter, there would have been an end of the dispute in the king's bench, i. e. the king's bench could not, after such a return, have taken further cognisance of the matter in dispute. Not a word is said about the bishop of Ely, nor indeed was any one ever so childish, who had the least knowledge of the university, as to assert that of late years the bishop had any visitatorial power over the university at large, whatever authority he may possess as visiter of certain colleges; and after all, lord Kenyon perhaps did not say the bishop of Ely, but the king; and the error in this statement is then owing to Messrs. Darnford and East, who have given the remark as above in their reports.

from it to the senate of the university; and, if there had been, as was hinted, any error in the appointment of delegates, the application should not have been for a mandamus to restore, but for a mandamus to rectify the appointment of the court of delegates.

Jurisdiction of the vice-chancellor's court. With respect to the great questions it may be observed first, that, as to the power of the vice-chancellor's court to take cognizance of the offence stated to have been committed, all the precedents, which can be found in the university books for near two centuries past, are in support of the jurisdiction of this court; for the differences between these cases and the present go besides the jurisdiction of the court. The court in these instances was constituted as in the present, and no other court has been pointed out as a substitute for it; for, if it is said that such a court should be composed of the vice-chancellor and heads, those very persons sat in the present question, and from them an appeal was made to the court of delegates*. If there had been an error in the proceedings of that court, it was to be rectified in the court of delegates, not in this place.

A printed book within the statute. As to the offence, it cannot be supposed that the university should have existed so long without the power of checking evils, which would be subversive of all its discipline. The words of the statute in question, however, decide this point. A pamphlet has been published in the university by a member of the university, a flagitious libel, containing matter highly offensive to those, who think the re-

* The appeal was made from the sentence of a vice-chancellor acting in his court, and there was no other way of proceeding; such is the effect of law in this country, that if certain forms are not followed, it is in vain to seek for justice, and, if they are followed, the uncertainty of the law is proverbial.

ligious establishment of this country of importance. "This gentleman too was a fellow of a college and a master of arts; but I hope, for his own sake, that he is not in holy orders, because I do not see how any person, who had before in the most solemn manner expressed his assent to every thing contained in the liturgy, could have ventured to write the pamphlet in question. It would have been for him to reconcile it to his own moral and religious character; therefore I take it for granted, that he is not in holy orders, and indeed he styles himself gentleman only in his affidavit*." His offence is within the statute. To promulgate dangerous doctrines by publication is at least as criminal as verbally to declare such doctrines; "for that which is uttered by the mouth may soon be forgotten, but *litera scripta manet*." Indeed they, to whom the education of youth is committed, would have been highly culpable, if they had suffered a publication like the present to pass *sub silentio*, without

* What had lord Kenyon to do with these points? He was sitting as judge on a different question, not on the merits of the pamphlet, and in the course of the pleadings had himself prevented the counsel from entering upon an examination of some passages in the book. But, to assist his lordship's fight, he may be asked whether he now holds all the opinions he did at twenty years of age, and how many he would publicly maintain, if the system of things were changed in this country. The fact is; Mr. Friend did in a publick manner disannul his former subscription to religious opinions, because he had changed his mind on those subjects; and until it shall be proved, that it is in the power of a man of four and twenty to ascertain, that a greater degree of knowledge and more extensive enquiry shall not alter his judgement on between two and three hundred disputable propositions; no one can be charged with inconsistency for declaring the change of his sentiments, nor will any man, who has reflected in the least on what passes within himself, be at all surprised at such a change. If a man retained his former opinion on the liturgy, and then wrote against it, there would be a difficulty in reconciling such conduct with a moral and religious character. What had lord Kenyon also to do with holy orders, when he saw by the affidavit, that Mr. Friend is a gentleman, not a clergyman? This is only one out of many instances of the inconsistency of our courts of law.

any endeavour, by the proper jurisdiction, to reform or punish the authour.

Recantation. With the form of recantation we have nothing to do, as it rests entirely with the courts of the university, which are guided by the principles of the civil law; but, if our assistance had indeed been required, it does not seem that we could have framed any thing more lenient than the recantation proposed.

Informality of the sentence. The sentence has been objected to, because it is not so severe as it should have been; one only of the things required by the statute has been done, and the other has not been inflicted: but the language of these statutes is borrowed from that of the civil law, and the court of the university, which proceeds on the principles of the civil law, has put its construction upon it, and we are not authorized to reverse its judgement. In Dr. Bentley's case this court interfered, because he had been condemned without a hearing, and every principle of law had been violated. But this case is very different, and there is neither precedent nor principle to warrant a mandamus in a question, which, for the sake of the publick and the university, ought to be at rest.

Confirmation by the three other judges. The rest of the judges followed their leader nearly over the same ground; one observed, that the publishing of a book must come within the statute, for it says in *lectionibus publicis seu aliter infra universitatem*, and the words are large enough to include this case, for which they were certainly intended, as the publishing of such a tract was within the mischief to be guarded against, and it would be exceedingly wrong to narrow the construction of the statute. The recantation

* This is just as wise a remark as that of his brother George, who observed *locus communis*, the term for an exception as well known as the English word *common*.

recantation has not the smallest ambiguity, for the articles point out the exceptionable passages; and to them alone the recantation refers. Another justice observed, that if this offence had been punished by a private meeting of the heads, a complaint would have been made, that the statute pointed to the vice-chancellor's court, that the privilege of being heard publicly in that court had been taken away, that banishment had been pronounced in a court new, unheard of, and self-created, while there were extant on the records of the vice-chancellor's court proceedings on this very statute*. Against such a substantial ground of complaint no answer could have been given. The last justice observed, that Rush must have been tried in a vice-chancellor's court, not in *camerâ*, for the account of the proceedings begins with the stile † of a court "*officium domini*;" and besides he was for a contempt of court committed into custody, which could not have been done in *camerâ*; and, though it has been said that no promoter appeared in that case, perhaps the minutes of it are not sufficient to shew that, but in the subsequent cases of Waller and Duckett that circumstance does appear ‡. There was not
any

common place book, to be the place in which an exercise was performed. *Aliter publicè* refers to similar exercises as those before mentioned; the statute is on preachings, and the publishing of books belonged to the licenser.

* Where are these proceedings? The university affidavit does not point out, that the cases under the statute were on the records of the vice-chancellor's court. Kipling swears only, that he has taken them from several books, papers, and records, kept by the registry of the university, who has many thousand papers in his keeping, not relating to any court of law.

† Why not? A justice of peace can commit a person in the streets for some offences; but the culprit will not on that account be said to have been committed in the court of king's bench.

‡ This is a most curious argument. In Rush's case it is doubted whether he appeared in the vice-chancellor's court, because there was not a promoter; and the learned justice tells us, that in the subsequent cases, which all parties
allow

any difficulty also in the recantation, which must refer to the things specified in the articles, and not to any thing else. Thus the rule was dismissed; and it is now time to call the reader's attention to the great question of the progress of religious liberty and free enquiry, against which the statute in question seems to have been formed, and of which, from the nature of their office, the heads of colleges seem to have ever been very incompetent judges.

GENERAL REFLECTIONS.

IT appears then first, that, in the reign of queen Elizabeth, though more tolerant than that of her predecessors, the freedom of sentiment, on which the secession from the church of Rome, called protestantism, is supposed to be founded, was far from being universally allowed. The princess had suffered from the bigotry of her sister, but in common with the hereticks of her days, she had not imbibed the benevolent principles of the christian religion. Her conduct towards the catholicks and other dissentients was marked with oppression: the fires were seldom lighted up in Smithfield, but the prisons echoed with the groans of persons of all ages and both sexes, confined not for crimes against the welfare of society, but for supposed error in doctrine; death was not very often their punishment, but ecclesiastical tyranny in most other shapes inflicted its stripes without mercy. The apostasy of the nation from the church of Rome had introduced

allow to have been used in the vice-chancellor's court, there was a promoter. Is there not a striking difference between the cases? and is it not extraordinary, that in the number of cases, under the statute de consensibus no promoter should appear? How could the justice and the counsel venture to say, that the precedents alleged were similar, when, not only in time, but in so many other instances, there is such a manifest difference?

a ferment in the publick mind ; and it was natural, that when men were taught to disregard the authority of a see reputed holy for many ages by their ancestors, and were encouraged to examine those scriptures, from the perusal of which they and their ancestors had been debarred, it was natural that a diversity of opinion should prevail, and that they should enquire by what means a woman could become the head of the church, and her self-created bishops receive the gifts of the spirit. Disputes were consequently very warm on the subject of church discipline, and in them were at times involved questions, attacking doctrines supposed the most important of religion. The university of Cambridge was by no means an idle spectator ; the rites and ceremonies of which Elizabeth was a great admirer, were not admitted without strenuous opposition, and her rules on ecclesiastical government were discussed with a freedom which shook the fabrick of her new erected church to its very basis. Either freedom of discussion was to be destroyed, or episcopacy must fall. The latter did not suit the purposes of a haughty monarch, who foresaw that it would be easy to dictate to a set of fawning priests, dependant upon her nod, but dangerous to permit an unlimited liberty of teaching among independant assemblies.

Church policy. Let tyranny determine, and pretexts are easily found. To attack with success, it was said, the errors of the church of Rome, uniformity of opinion should prevail among its opponents ; and this uniformity could never be obtained, if the rashness and petulance of youth would not give way to the decisions of age and experience. If new opinions are to be thrown out at random, and without censure from the pulpit of the university, the minds of the younger part of the audience will be first infected, and through them heresy and schism will make their way over the whole kingdom. Let then the teachers
be

be attended to; let their errors be pointed out to them by older and better heads; let them be reasoned with; let them not be treated with the severity of publick courts of law, but let them be examined in private; and, having there been convicted of error by wise and learned men, let them remove the stigma brought on their profession, and extricate their hearers from this labyrinth of error by an open and candid recantation. What could be more moderate! What more likely to conciliate all men to the mildness of this new mode of governing in ecclesiastical affairs! Who more proper, from their age, their education, their wisdom, their station, to examine and decide upon such matters, than the heads of colleges!

Natural effects of it. On this principle the statute de concionibus or sermons was framed; and its good effects in the university answered very soon the purpose of the legislator. The proceedings were short. The preacher, who had advanced sentiments deemed erroneous, was called before a meeting of the chancellor and heads of colleges: they pointed out to him these errors, they reasoned with him, and sometimes with success; at other times they inflicted the penalty of the statute, they banished the offender from the university: peace was soon restored, disputes were seldom heard, the papists laughed at the pretensions of the hereticks to freedom, and the heads of colleges smiled in their turn, when sinking on the cushion in a cathedral, and decorated with the protestant ornaments of episcopal dignity. A few members of the university exclaimed against this and other infringements of their rights: it was indeed a daring innovation; but the opposers of it, being termed daring and seditious innovators, were crushed by the arm of power. The natural consequences of this institution might, without reference to any law, be easily conjectured by even in our own times. The university, under the guidance of the heads of colleges,

leges, when Mr. Pitt was first a candidate for a seat in parliament. It was not to be endured, that an upstart youth should come forward, unsupported by power or connections, to represent the university : two short years changed their expressions, and the wealth of the treasury supplied every other defect. No one can detract from the merits of the minister, for these obsequious servants have not been ill paid by a bishoprick, three deaneries, and various other valuable preferments. Thus connected with the minister, the conduct of the heads in any transaction may be easily divined, and implicit obedience is in general to be expected from them in the same degree as from a bench of bishops.

In different reigns. Hence the reason is evident of the number of prosecutions in the reign of Elizabeth, and the paucity of them under her successors. Hope and fear are the great incitements to action, and present reward or punishment must with the majority produce the greatest effects. The way to preferment, it was soon seen, was by a compliance with the ruling powers, the certainty of punishment was clear from the examples made of their authority by the heads. In the reign of James the first there were few instances, because, as the monarch concerned himself less with these subjects, the heads were less likely to be gainers by their officiousness, and the university had not recovered from the torpor into which it had been thrown by the severity of the preceding reign. The turbulent times that succeeded made the heads fearful of acting, and they had little encouragement to expect reward for a religious warfare, under the carelessness of the second Charles, the popish bigotry of the second James, the tolerant principles of the third William, or the inactivity of his successor.

A solitary example was shewn to the world in the last mentioned reign, and a man of letters and moral probity was, for the singularity of some opinions, banished from the university, to make way for a profligate and a contemner of all religion. Yet Whiston would not probably have been called before the heads, if an alarm in the state had not given rise to expectation of preferment in his persecutors; and if the cry of the danger of the church had not been previously used in the same manner, as within these few years, to burn down religious meetings, and plunder private citizens of their property.

Under the Brunswick family. During the reigns of George the first and his son, and the greater part of the present reign, the statute lay dormant; for the two former kings were not, from their birth and education, remarkably attached to the established church; and it was both their wish and the fashion of the times to encourage, as much as possible, liberality of sentiment among the various professors of religion. A departure from these principles in the present reign may be easily accounted for: the monarch was brought up in the trammels of the established church, the opposers of his family were become its most strenuous supporters, a system of corruption had undermined every principle of honour, and the increase of learning and information had produced a great deviation from the articles of religion imposed on the nation in the reign of Elizabeth. The freedom of opinion, which had manifested itself in various publications and frequent discourses before the university, had been tolerated, indeed, but they were viewed with a jealous eye by the hierarchy; and it had been resolved to take the first opportunity of stopping the progress of doctrines which threatened the total subversion of the episcopal establishment. The alarm excited in the nation by pretended plots and conspiracies, was a sufficient foundation for an attack upon an individual,

dual, rendered odious to the enthusiast, by his open avowal of sentiments, leading, according to the english church, to eternal damnation, and still more odious to the intriguing priest, for his contempt of the discipline of that church, and the means by which he saw its hirelings cringing into the higher preferments. It was expected, that by overwhelming him with the epithets of jacobin, republican, and leveller, they would gain an easy victory, and, by thus stepping forward in support of the alarm, receive in due time, from the ruling powers, the rewards of their exertions. The church, it was said, was in danger, and the twenty-seven, with the vice-chancellor and heads of colleges, combining together, without regard to the separate characters of judge, accusers, and jury, laid claim, according to their different degrees of merit, to the favours of their heaven-born minister.

Use of obsolete statutes. When abuses prevail in a system in many respects capable of rendering service to the publick, it is the duty of an individual both to point them out, and, if able, to shew the means of removing them. The power given to the heads of colleges by Elizabeth is injurious to the university, and to the cause of literature and religion. They have been, and always must be, prejudiced men. The majority of them are priests; and not being tied down, like a jury, by the sanctity of an oath, being influenced by hopes of preferment, and implicated in the system, which the promulgator of a suspected doctrine is supposed to attack, they can hardly give an impartial decision on any question relating to the doctrine and discipline of their church. By such men obsolete statutes will be revived, when it suits their purpose; and they forget, that, if the state should institute a rigorous enquiry into their conduct, according to their statutes not a man of them could hold his place. If a private member of the university is to be banished on a statute passed in the reign

these statutes, to which they have sworn obedience.—
 But a good man does not wish to see punishment inflicted; and to devise for the future well being of society, is better than revenge on a retrospect of the past misconduct of individuals. The state would do well to interfere; for the university is a publick body, and the publick has a right to expect from the immense expenditure in it, that so noble an institution should not be prostituted to the purposes of intrigue and faction. Yet what can be said of later times? What proofs have been given of its attention to literature? What works have been produced worthy of such a body? What are the studies in which it is engaged? What is the morality of its members? Is learning the path to honour or emolument, or can indolence glide into the highest posts? Is every language, art, or science encouraged, or are the rulers content with preparing a few men for their first degree, and giving themselves to listlessness and sloth for the remainder of their lives? Much may still be done in the place, when monastick institutions are destroyed: and, if the state should interfere, as it is to be hoped it shortly will, instead of too rigidly enquiring into former transactions, would it not be best to attend chiefly to the younger part of the university, and to excite it to industry, by institutions better adapted to the genius of the times? If the senate were called upon to new model its statutes, and to lay down a plan of study, there cannot be a doubt of their preference to the antient code; and instead of the prostitution of an oath, which is now so shamefully administered by the pretended guardians of religion, the cheerful obedience of every one would be founded on laws dictated by good sense, and the publick advantage.

Decision of the
 king's bench.

But to return from this digression: If
 the decision of the vice-chancellor and
 the court of delegates were not founded upon justice,

how came it to receive the sanction of Westminster-hall? An alarm had been spread throughout the nation, and the courts of law, whatever may be their conduct in private actions, in affairs at all connected with the state have been in general found to receive their clue from the higher powers. The chief justice was unguarded enough to shew this, when the natural impetuosity of his temper broke forth, and giving rein to his passions he forgot himself so far as to call the pamphlet, which has given rise to this discussion, a flagitious libel. If his words had been true (and the contrary opinion of impartial men, eminent both in the civil and the common law, justifies the assertion, that he was either mistaken, or that the definition of a libel is difficult [to common sense and common honesty]), still his language disgraced the seat of justice. He was not then sitting upon the merits of the book, but the conduct of the vice-chancellor's court. He was not supposed to have read the book; and it was cowardly in him to assault, when every weapon of defence was removed: it was injustice in him to become an accuser in the place, where he sat as a judge.—Let the petulant and fiery justice, however, use his own terms; let it be in his estimation a flagitious libel, since it exposes too many flagitious acts, perpetrated without remorse in these kingdoms; since it exposes, but not sufficiently, the follies and jargon prevalent in the courts of law; since it holds up to derision that system, by which this learned judge attained to his present situation; since, instead of the specimens of balderdash latin and vulgar english spouted from the bench, which afford continual amusement to the younger students of the law, it calls out “for elegance of language, propriety of expression, convincing eloquence, happy allusions, and, to sum up the whole in a few words,” it expected in the higher departments of the law, “to find both at the bar and the

table the gentleman and the scholar."* But was it becoming in the judge to call the book a flagitious libel? Did he not know to what a persecution the authour might in consequence of this expression have been exposed?—Doomed to hear it once mangled by a professor in the university, might not his ears have been tortured by the vile declamation of an attorney general? What probability of favour had he from the court, if this attorney should in consequence of the judge's expressions think fit to arraign him? The judge had already determined the book to be a libel; but between him and the authour is an english jury, and twelve honest and independent men are not, as we have seen, to be daunted by the long-winded harangues of a court lawyer.

Trial by jury. The safety of englishmen depends on a jury; and the more this institution is considered, the more worthy will it be found of admiration. The lawyers may surprize it into improper decisions, but it is the best check that can be devised against lawyers: and as long as the system of deception, arising from the language of the law and the practice of too many of its professors, is permitted to maintain its ground, the full effect of juries cannot be perceived. Much praise is bestowed on the constitution of this country; but the best part of it is the trial by jury. The house of commons was designed for important purposes, but compared with juries it is a novel institution; and it would be well, if the rights of juries had never been infringed on by this part of the oligarchy of the kingdom. A house of commons may be rendered an instrument of the greatest tyranny and oppression; it may vote large sums of money, to be divided in detail among its own members; it may propose laws detrimental to the people at large, and useful only to the oligarchy; and

* See Peace and Union, p. 32, 33, 2d ed.

against such tyranny the people may find it difficult to gain redress. But though future laws made in this kingdom should favour only the oligarchy, still, whilst the people retain the trial by jury, the profligacy of its oppressors would be checked. The people may be deceived by fictitious alarms, their decisions may not for a time be consistent with their own welfare; yet the deception, as has been already seen, is short-lived, and the lives of men will not be wantonly trifled with at the caprice of a time-serving minister. Let englishmen then cherish the idea, that liberty depends on the preservation of this institution of their saxon ancestors, and that, if the commons' house, as it is improperly called, should betray its trust, and give up the dearest rights of their countrymen, still the nation cannot be completely ruined, till by losing or impairing the trial by jury she throws away the shield, and exposes herself unarmed to the merciless shafts of despotism.

Acquitted felons. The various attacks lately made on the liberty of the subject, and the freedom of the press, are a lesson to the nation; and, when the time comes for reformation, it is to be hoped, that sufficient precautions will be taken, to prevent in future a corrupt administration from squandering the wealth of the people in unfounded alarms, and from endeavouring to demolish, by a system of espionage, both publick and private happiness. The world has viewed with astonishment the trials of men acting upon the same principles, which their great accuser had been industrious in propagating; and, though an attempt has been made to slur the characters of the acquitted by the contradictory as well as ridiculous term of "acquitted felon," every true lover of his country rejoices at the triumph of these acquitted felons, that is, of innocence over guilt, of unprotected individuals over the arts of intrigue and treachery supported by wealth,

power, and influence. In the general joy on this subject the complaints of numbers suffering from the same cause in various parts of the kingdom are less likely to be heard; yet it is of use to expose the flagitious acts of tyranny, and to shew upon what an extensive scale its operations were framed. The publick mind was to be alarmed by vile insinuations; every person, who dared to think for himself, was to be called a jacobin, and a leveller; the influence of government was to be used in all places to crush the individual, who made use of a rash or thoughtless expression, or who more boldly expatiated on the notorious corruption and infamy of the higher orders.—As the wealth of the state was thus prodigally wasted, the wealth even of the university was not to be spared, when so laudable an object was in view as an attack on the liberty of the press. We live still “in happier times than those, when a Cranmer was dragged by an academick audience to the stake, or a Whiston was exposed to the arbitrary proceedings of a vice-chancellor and the heads of colleges *.”

Heads incorrigible. I rejoice that, notwithstanding much uneasiness which I have suffered, I do not feel sufficient reasons to alter this opinion. In Whiston's time the heads received no check, and their proceedings were not attended with any mark of publick indignation. The marks of disapprobation, with which the late conduct of this body has been received, will probably deter it from similar efforts in future. They may think indeed, that, by bringing the censure of books within their corrupted vortex, they have gained another mode of recommending themselves to the chiefs of administration; but the members of the university need not be alarmed, since very little caution is requisite to baffle the attempts of this im-

* See Preface to *Thoughts on Subscription*, p. 6, 2d ed.

pertinent inquisition, and by an easy mode of publishing they may laugh at the pursuits of a vice-chancellor and heads of colleges. I have not therefore done an injury to the publick, but by exposing the conduct of the heads have, it is to be hoped, effectually shaken their influence. I have shewn, that in all times they are the same, that their power must be destroyed ; for they have made it manifest, that it cannot be exerted with dignity to themselves, or safety to the publick. But I will dwell no longer on this topick, as it remains only for me to make the proper use of the situation, into which I have been thrown, and to suggest to others what appear to me the best means of avoiding similar difficulties. To do this, I will shew how I was led into them ; and, though few persons may be found in exactly similar circumstances, there will be some in which most of those, who dedicate themselves to literature, will feel an interest.

Account of the authour. My family, from the little that I know of it, seems to have been, for between the last two and three hundred years, in that class of society which Mr. Burke has decorated with the title of the “ swinish multitude ;” and though I was born just as honourably, according to the vulgar language on this head, and educated perhaps more liberally, than the right honourable gentleman, notwithstanding his contemptuous expressions, I do not in the least regret the situation in which providence chose to place me, nor feel the least desire to differ in rank and titles from my brethren of the swinish multitude, nor wish, except by their consent, to be placed in any office of trust or emolument. My father was one of the principal tradesmen in the city of Canterbury, in which place he and my brother have borne the office of mayor, an office for which I should entertain a greater esteem, if instead of being confined to the aldermen it were bestowed on any man in whom the citizens, uncontrouled in

their choice, placed a confidence. While I was very young, a turn for reading appeared in me, which was much encouraged; and, by the kindness of an indulgent father, no expence was spared on my education, and thus I became incapable of gaining by trade an easy subsistence. With the first expression of my wish to go to the university my father complied; and, though in a subsequent period he felt severely the disappointment of his expectations, when my prospects of success in life were cut off by the freedom of my opinions, he could never be induced to alter the current of paternal affection.

The life of a school-boy and a young collegian is described in few words; but I never reflect on mine, without recollecting my obligations to two persons for kindness, which it is not the lot of many in early life to experience. My father taught me to read, and from him I learned to pay great attention to an exercise neglected in general in our schools, and which I consider of more importance than most things taught in the common routine of education. Mr. Six of Canterbury is well known in the philosophical world; his son and I were intimate friends; and we, with two other of our common friends and school-fellows, received after school hours the benefit of his father's instructions. Thus were our minds enlarged, when very young, by an acquaintance with the easy topics of natural philosophy; and by considering many things as play, which are looked upon in most places as serious tasks, we were with greater ease initiated into the severer studies of the university. This experience has convinced me, that much time is wasted in our public schools; and, if it is necessary that a few boys (for after all but a few boys ever arrive at excellence in this respect) should be taught to utter their thoughts in latin, and to quote with ease the greek poets, it would be better for the majority, that they should learn to read english well,

well, be made acquainted with the beauties of their own language, and those parts of natural philosophy, and the rudiments of knowledge, which will be the most useful to them in future life.

Conduct in the
university.

At the university my conduct resembled that of most other young men, who attain to what are called the honours of the place. A fondness for society led me to pass many hours in company; but I indulged much in solitary walks; and when alone, my time was dedicated to reading and thinking. On this point I have only to regret, that I did not follow more the advice of an experienced friend, who had quitted the university about thirty years before my admission into it: Read, said he, one hour and think two. This advice has since frequently occurred to me, and I mention it for the sake of younger students, who peruse my narrative. In consequence of it, I was led indeed to think on the different objects of my studies; but my attention was chiefly confined to mathematical pursuits. In this period of life, it can be expected from very few persons that they should pursue the study of religion. We sometimes had lectures on the greek testament, but they were little regarded; and the sermons, which we were obliged to hear, were not calculated to make a deep and lasting impression. In short, I looked forward, like those around me, to the time of taking our degrees, and my studies were chiefly directed to those subjects, which are now almost the only road to academical honours and emolument.

Discovers his religious errors.

In consequence of this application I became a high man, as it is called, being the second on the tripe's or list of academical honours; and this distinction procured me the patronage of doctor Caryl, the master of Jesus college, so that quitting Christ college, in which I had taken my degree, I was through

his interest first made fellow of his college, and soon after appointed by him to the tuition. Becoming thus early, that is, in little more than a year from the time of taking my degree, tutor of a college, I had sufficient employment on my hands; and it cannot be expected that divinity, a study of no great repute in the university, should occupy much of my time. I had more than sufficient knowledge for episcopal chaplains; and my reputation was too high for them to enter into a close investigation of my abilities. Various circumstances lead men to the train of thoughts, which materially alters their situation in life; and it is difficult for them to trace back to its source their departure from established opinions. I can remember only, that I was not much attached to authority: yet I had my prejudices against the dissentients from the established church, and conceived myself, like the generality of persons with whom I conversed, a believer in the trinity. As soon however as my office permitted me, I entered more seriously upon the study of divinity; and my faith probably was first shaken by learning the hebrew language, and consequently by paying a greater attention to the scriptures. I recollect also a circumstance, which might lead me to an acquaintance with those writers, from whom, without acknowledging the obligation, many of the modern divines have borrowed their opinions.—Previous to a little journey I was about to make, it might be two or three years after the commencement of these scriptural studies, I looked round our college library for a small pocket volume to amuse me on the road, and the racovian catechism falling into my way, seemed well adapted for the purpose. This book I took with me; and the plainness and clearness with which most of the propositions in it are laid down, made an impression on my mind; but though the comparison of it with the church catechism was not in favour of the latter, I was resolved not to involve myself in controversial divinity,

till

till I had searched farther at the fountain head for the truth or falsehood of my opinions. The result of my enquiries was, that I made up my mind on the doctrine of the trinity, the great error of the christian world, and was thus freed from the shackles of the church; for, if it could deceive me in so essential a point as the nature of the being, to whom I had been taught to pay my adorations, it could have no pretensions in any other article to implicit obedience. Hence I studied theology with more ardour, making the scriptures my basis, and in every difficulty seeking for information from the voluminous exertions of the fathers, the *critici sacri*, the *fratres poloni*, and the valuable researches of later times.

Renounces them
publicly.

Having thus extricated myself from the errors of my birth and education, I thought it my duty to endeavour to release others from the yoke imposed on them by authority, and to place them in a situation, in which, if they did not imbibe my principles, they might at least have full scope for their own exertions. With this view I caused papers to be distributed about the university, giving notice of an intended grace to remove the subscription to religious tests; and the rejection of a grace to this purpose, proposed some months after by Dr. Edwards, gave rise to a publication, in which I thought it my duty to absolve myself from all future allegiance to the church, and to declare publicly my disavowal of its doctrines. This step was taken, as has been every other relating to my separation from the church, without consulting any person; and I did it with this view, that, as I had once given a publick sanction to the doctrine of the church, it became me now, that I had discovered my errors, and had a proper opportunity of doing it, to disavow them with equal publicity. My opinion of the propriety of this step has not been altered by the subsequent conduct of other persons.

it; and at the same time I do not take upon myself to condemn those, who in nearly similar circumstances act in a different manner. We are so framed by education and habit, that conscientious men will see the same things in different lights, and with equally good intentions there will be shades of difference in their actions. Some, on renouncing the errors of the church, will be content with resigning in silence its emoluments; others will think themselves bound to declare openly their conviction of these errors, and to give a publick testimony of their faith. In some degree it is the lot of humanity to act with apparent and oftentimes real inconsistency: there must be a time when a man begins only to suspect his errors; his conviction ripens by degrees, and during the period of conflict in his mind many uneasy sensations will arise, of which those, who subscribe without reflection, and maintain opinions without enquiry, can have no conception. Happily for mankind we shall be judged at the last day by one, who is conscious of our infirmities, and can make that allowance for them, which is not to be expected from a world, indulgent to its own follies and vices, but scrupulously severe in balancing the actions of all, who dissent from the fashions or prevailing doctrines of the times.

Is deprived of the tuition. In the system under which we live, to declare openly an opinion on religion is not quite so dangerous to an individual as in former ages; but he must make up his mind to bear a variety of slights, and not a few positive injuries. He will be treated frequently as the enemy of his species in this world, and piously consigned to eternal damnation in the next. The latter censure might be a subject only of mirth, if the maintainers of this opinion would only be content to resign their share of this world's good to the poor devil, whom they so charitably cut off from all hopes in the

next: but unfortunately no men are so tenacious of the happiness of this life, so eager in pursuit of its emoluments, and so zealous in depriving their heretical brother of all chance of success in every department, as these orthodox pretenders to sanctity, these real or hypocritical believers of the eternal state of the damned. It has indeed been said, that, by depriving me of the office of tutor, the matter cleared his way to a bishoprick: but, not to inquire too scrupulously into his motives, let it suffice, that I was deprived of the tuition, because I declared my opinions; for it was well known, above a year before this declaration, that I had imbibed doctrines repugnant to those of the establishment; and not a hint was thrown out, that my lectures in the mathematicks could be at all injured by my theological pursuits.

Travels abroad. I was now deprived of my office of tutor, and by deprivation and resignation had lost above two thirds of my income. The sensation of comparative poverty was by no means agreeable; and I felt myself much at a loss, whether I considered my own private advantage or the best means of rendering service to the cause of truth. I explained my opinions more fully and publicly in the university, I conversed freely with the orthodox, I endeavoured, but in vain, to correct their misrepresentations. Considering in my own mind the various ways by which we are deceived, and that I might be too forcibly carried forward by what others might call enthusiasm, though to the lukewarm the least degree of earnestness is enthusiasm, I resolved to divert my thoughts for a time by a tour on the continent. This tour was made just on the commencement of the french revolution, and the greatness of that event contributed still farther to divert my mind from theological pursuits. I rejoiced at the prospect of general freedom in Europe: I heard with pleasure that the chains of superstition were broken.

broken ; I recollected the misery, of which I had been a few years before an eye-witness in a tour through France, and, if I pitied the sufferings of a fugitive clergy and nobility, I could not but reflect on the vassalage in which both orders held the people at large, in respect to religion and property. The distresses subsequent to the revolution do not change my sentiments of the two orders ; the misery of anarchy is but for a moment, compared with the lasting tyranny, by which these two orders oppressed both body and mind. Their nobility was founded on a contempt of human nature, on an insolent distinction between themselves and their fellow creatures, on the ignorance of their mutual relation to one common parent ; and, when this phantom of nobility presented itself to my mind, the moral contained in the excellent lines of one of our bards arose with it,

When Adam dived, and Eve span,
Pray, who was then the gentleman ?

On my return from the continent, I
Returns to the university. buried myself in the obscurity of a college. The straitness of my finances prevented me from mixing a great deal in society ; but a select party of friends, both in the town and university, to whom a difference of opinion was not a sufficient ground for breach of friendship, relieved the hours not employed in study. I revised my sentiments with, I should think, a freedom from the prejudice which is supposed to possess the mind of one, who has publicly maintained them, and the great doctrine, that there is one god alone, the father of all, and one saviour, Jesus Christ, a man in all respects like ourselves, except the greatness of his mission, the superiority of his character from spotless obedience to his god, and the miraculous powers bestowed on him, was more deeply infix'd on my mind. A freedom of conversation

sation with men of different sects in different kingdoms, led me necessarily to examine a great variety of doctrines: from comparing all together, there seemed to me to be a universal departure from the spirit of christianity.

In the church of Rome are ceremonies repugnant to the simplicity of the gospel, and dogmas founded on a supposed infallibility in a pontiff or a general council, which evidently oppose a precept of our saviour requiring us to call no man teacher upon earth. The ceremonies of the church of England are not indeed so glaring, but, though not so well calculated to impress the mind with superstitious awe, are equally repugnant to the christian character. This church has divested its worship of romish splendour, but retains in many places a childish imitation of pomp. Its priests, and no such priesthood is ordained either by Christ or his apostles, are distinguished by dress; its service is copied chiefly from the mass; and, if it pretends not to the infallibility of a pope or general council, it claims equal obedience to articles of human authority, and threatens equal damnation to those who swerve from certain points of its faith. Christ's kingdom is not of this world; but the rewards held out to the retainers of the church of England, and the zeal with which it opposes the sectaries of every other description, evidently prove that it is an institution rather of policy than of religion. It might naturally be expected that freedom of enquiry should take its abode among the dissenters, and that they who had renounced the authority of the church would be little inclined to arrogate to themselves any sort of spiritual authority: but the accounts given to me by many of their ministers of the pertinacity of most congregations in any once established mode of thinking, lead me to entertain a very different opinion of this body from that, which I should have formed from the personal only of their best leaders, and the liberality of senti-
ment

ment prevailing among some of their most distinguished teachers. The meeting in London of the ministers of the three denominations, to present petitions or addresses, or to interfere at all as a publick body, seems to me to have all the bad effects of hierarchy, except temporal wealth and power: the receipt and dispersion of the regium donum, the distinction of clergy and laity, the experience or faith required in many congregations on the admission of a member, the articles imposed by societies which distribute money among indigent ministers, — these, with the almost general belief of a trinity, and a rigid adherence to the doctrine of Calvin, give me little encouragement to hope that the time is near at hand, when all shall be taught of god. The great error in all the above mentioned bodies seems to be too great an attachment to authority, an easy acquiescence in the opinions of their forefathers, and an indolence in examining the scriptures for themselves. The papist must give up the infallibility of his church, the protestant renounce his dependance on articles, canons and creeds, and each association of christians should consider that it has not attained to the whole truth, that the scriptures should be the rule of its conduct, and that to advance towards perfection should be the general desire. Does it become them to be angry with every one who mentions an erroneous translation in their common testaments, who points out to them a mistake in their prayers or psalms, who exhorts them not to be idle, but to think for themselves? Every error corrected opens the way to a future good, and it should be the endeavour of each man to leave his children a greater liberty and a more improved knowledge than he received from his fathers. We may pride ourselves as much as we please on the perfection of our knowledge; yet many generations will probably elapse before the follies grafted on our religion are entirely eradicated.

Employment in the university. My time was now chiefly taken up in a laborious occupation. A few men of letters thought that an edition of the bible, departing as little as possible from the present reading, but corrected by the various lights which have been thrown on it since the translation under the direction of king James, would be a very useful work, and contribute more than controversial writings to the removal of error. My share in this work was considerable, rather from the quantity allotted me, than the difficulty of the task. Yet the comparison of the pentateuch and the historical writings in our bible with the original and translations in several languages, and the pursuit of a question through a variety of authors, must be attended with no small expence both of labour and time. It is not necessary, however, to say much on a work suspended by various causes; part of it was lost in the flames enlightened by the blind zeal of the church at Birmingham; and for nearly these two last years my attention has been carried to other pursuits; and if I had now the inclination to pursue the plan, I am destitute of the books necessary in such an undertaking. During the time that I was immersed in this employment, the perusal of various popular writings, and the conversation of all around me, led me to reflect seriously on the state of the nation. I was not connected with any party; I had been a witness of the miseries of the French, but saw no reason for adopting all their principles, or their conduct in government. There were many defects and abuses in our own government; yet the lenient hand of reform seemed sufficient for their removal; and, to encourage this spirit in the governors and the governed, I wrote my pamphlet entitled *Peace and Union*. For suggesting the means of obtaining such desirable ends, I have been driven from my books, and deprived of a great part of my slender income; and I have been under the necessity of defending myself from
the

the most contemptible assailants, and my time has been taken up on subjects most irksome to a man of letters.

Effect of censures
upon myself.

Thus I have fairly stated my situation, from which may be derived some useful reflections. The end of punishment, it is said, is either to reform the criminal, or to deter others from similar practices. In my case the punishment has been of no manner of use. I am not reformed from those opinions, which my adversaries condemn; but, on the contrary, am more tenacious of them than ever. By being deprived of the office of tutor, I gained more time for my own studies, and they have impressed deeply on my mind these truths, that there is only one god, and that the trinity is a fiction of bewildered metaphysicians. For avowing these truths I am insulted and injured; yet one end of punishment is not answered, for it does not change my opinion. Again, for publishing *Peace and Union*, I have suffered more injuries; yet to no purpose, for my mind remains invulnerable by the darts of my adversaries. So far from giving up my supposed errors, I find, on investigating the causes of complaint more closely, that I have erred in not giving my enemies greater occasion to exercise their malignity. In my pamphlet I recommended triennial parliaments, and a partial enlargement of suffrage; conceiving erroneously, that the people were not sufficiently enlightened for universal suffrage. I did not consider, that every individual was sufficiently enlightened to give his vote in his titling, and to understand every law by which he ought to be affected; and that to the want of universal suffrage are owing the ignorance of the bulk of the people, and the corruption of the higher ranks of society. So far therefore from being reformed in this respect, wherever I have an opportunity, I am an advocate for universal suffrage and annual parliaments; declaring, however, at the same time, that I by no means wish to see

these

these points carried by force; and exhorting all, who go to the same length with myself, to unite contentedly with others in any inferiour species of reform. If every householder obtains his right, or if the borough of Old Sarum only were disfranchised, a point is gained; and we may hope, by degrees, to rescue the people of England from the ignominy of not being represented in parliament.—With respect to the death of the late king of France, my sentiments are unaltered by the obloquy thrown out against me; and I still cannot conceive what right an englishman has to cut a frenchman's throat on that account, any more than he has to assassinate a russian for the deposition of the late czar. Till some more convincing reasons appear, than the minister and his adherents have as yet condescended to bring forward upon this event, I must say as before, that, if all the kings on the continent were put to death by their subjects, it is not our business to punish their conduct. We should be indignant at their presuming to change our government; and what pretext can we have, from a change in theirs, to interfere in their internal concerns? On the distresses of the poor it is to be lamented, that there is still less reason for a change of opinion. I see clearly the difficulty of raising taxes so as not to oppress them; and I am convinced, that as rich men are the great gainers by war, either by contracts, loans, commissions in the army and navy, titles, commissaryships, or other similar gratifications, the whole expence of war should be confined to the rich. The subject deserves a fuller investigation.—May not war be considered as a lottery, of which the worst effects fall upon the poor? They are enticed or taken away by force from their families, are subjected to hardships, the chance of wounds or death; and the honour, if honour is to be gained by murder and bloodshed, falls not to their lot, but to an indolent spectator it may be of the bloody conflict. The rich contribute

indeed, and boast frequently of a paltry contribution of a few hundred pounds, which are repaid to them tenfold in commissions or sinecures; and they, who do not directly or indirectly receive any emolument from the war, who have no concern with loans, nor solicit a single favour for themselves or their relations, would be shocked, when their cry for war was stopped by a demand of half their income to carry on their bloody purposes. The horror of war is so great, that we should be all interested in making the period of its career as short as possible; and, on reconsidering the subject, it appears to me a desirable measure, that on the first declaration of war, the war contributions should instantly take place in a proportion nearly of this nature. Out of an income above forty, and under a hundred pounds a year, let one tenth be annually dedicated to the war expences, two tenths of an income under five hundred a year, three tenths of one under a thousand, four tenths of one under ten thousand, and so on in the same proportion for superiour incomes. Let these contributions continue till the whole expence of the war is paid, and I have then not the least doubt that the period of it will be much shortened, and its object will be well understood. On the subjects of academical enquiry, it is needless to expatiate; some opinions imputed to me I did not maintain, and the others are not of any consequence: suffice it, that the court, which condemned me, never pointed out what it approved or disapproved of in my pamphlet, and consequently its censures cannot lead to my reformation.

Effect upon others. But if I have not been reformed, others, it may be said, will be deterred by my example. Deterred from what? from improving their minds by study, or from communicating with the publick the benefit of their leisure. To destroy study no man can wish, or at

least he will not have the confidence to avow such a desire: and if he permits the student to glean information, by what art can the mind be enchained and ensured to maintain established opinions? The thing is impossible. My example cannot deter studious men from reading and thinking, and consequently from departing, as I have done, from the system of our forefathers. If it deters them from publishing their sentiments, they will still diffuse them more earnestly in private; and the stream pent up will in time break down its banks, and carry destruction over these plains which it was designed to embellish and improve. The thoughts of studious men are not their own; if the publick gives them leisure, they are bound to make a proper acknowledgement for it. By their very errors the publick may be benefitted; and a clash of sentiments cannot, unless the arm of power interferes, be injurious to the publick good. Should any one be deterred by my example, it can be only from some disgraceful motives, which have gained the ascendancy over his mind: for either he will not study at all, or, having discovered what is important in his opinion and proper to be divulged, he will not have the courage to make the least sacrifice to truth.

To whom useful. But, though the treatment I have received cannot answer either of the supposed ends of punishment, cannot reform me, or deter others in a similar situation from pursuing a similar mode of conduct, it might be made of use to fathers of families, to universities, nay, without vaunting, I might say to the governors even of states. Fathers might be led by it to reflect seriously on the dangers, to which they frequently expose the morals and the happiness of their sons. An enlarged mind cannot fail of pursuing truth, and it is the father's wish, that the son should exert in his studies to get improvements in knowledge, if shackled with custom and false opi-

tions, may lead to no small disquiet; and the temptation of swerving from duty is too great to be presented with open eyes to any one. Whatever sentiments the father maintains, my example proves, that a studious son cannot be restrained by them: and, as long as opinions are sanctioned by authority, every man has reason to fear that his son may be a sufferer. The petition of christian fathers to the common father of all is, *Father, lead us not into temptation*; yet how little do christian fathers, teachers, governors, think of this prayer, since they not only neglect the proper means of preserving their sons, their pupils, and their subjects from evil, but absolutely place them in the way of the basest temptations! Universities are called upon by the injuries, which I have received in one of them, to investigate the nature of their institutions, to impose no longer on themselves or others, but to consider, as in the presence of God, how solemn it is to swear before him, how criminal to exact an oath from younger students, which the superiours themselves do not perform; how wicked to demand subscription to a system of religious doctrines, when every page in history shews their fluctuation; how detestable to persecute for opinions in those places where least of all the faculties of the mind ought to be restrained; how futile to act in opposition to truth, when the banishment of an individual creates in those who remain a greater spirit of enquiry. The governors of the state might be interested in examining, what share they have in promoting acts of tyranny and oppression. Inferiour corporations will not be active, unless under the idea that their zeal meets the approbation of their superiours, and on this account every good government will be careful not to encourage by its institutions, the folly or oppression of inferiour magistrates. The improvements in knowledge within the two last centuries have materially altered the sentiments of this country; yet many of the old laws remain, and are retained

tained with the sole view of giving a check, whenever opportunity offers, to farther improvement. Would it not be wiser to remove every law founded on ignorance by our ancestors; and thus by taking away the cause of disquiet to create a much greater degree of union and harmony? That the laws now in force cannot destroy the principle of enquiry will be evident to any one, who reflects on the real state of this country: they deter neither myself nor others; and I am credibly informed, that the persecution of me has excited a much greater curiosity to investigate my opinions, than could have been procured by the slight efforts of common publication. The arm of power is in vain lift up to crush a few individuals, whose ruin, of whatever consequence it may be to themselves, cannot, in the course of time, and according to common experience, fail of undermining the strength, and accelerating the fall of their oppressors.

Address to students. But it cannot be expected from many fathers, from universities, or from the state, that the fate of an individual should counteract their mistaken views of private interest. I hasten to speak to young men, to those who are entering upon the theatre of life, to such as might otherwise be discouraged by the difficulties, which many in common with myself have been forced to encounter. If ye have the laudable desire of improving your minds, encourage it to the utmost: under every thing that has befallen me, it has, with the idea of performing a duty, been a source of consolation. Beware of being misled by the artifices of men; subscribe not to any doctrines or opinions, which ye cannot sanction from examination and entire conviction. Let not the prospect of mercenary emolument allure you to so base an act: be assured, that it will either deprave the mind, and sink it into greater infamy, or render your future life subject to many uneasy reflections. At first I subscribed

I 2

carelessly

carelessly as all around me did : afterwards I fancied that the doctrines imposed on me were true ; and, if I could not extricate myself without much uneasiness and trouble, what will be your situation, if that uneasiness is sharpened by the sting, that ye were sensible of the impropriety of your first step ? The question to be fairly examined by you is this : Have ye examined, and do ye believe the propositions submitted to you ? and an upright mind will despise the sophistry of Mr. Paley's philosophy in answering such a question. Yet ye will say, What is to be done ? I have expended my little fortune in preparing myself for a profession, or in expectation of the emoluments, which the university affords. I answer, What is to be done, when ye find out your errors ; when your mind grows uneasy in the possession of some, and the prospect of greater preferments ? Do what is right : be fully persuaded in your own minds, and leave the rest to providence. Your situation may not be envied by your competitors, rising to fame and wealth ; yet ye will hardly want food and raiment, and with proper exertions, the peace in your own breast will be more than a sufficient counterbalance to the wealth and honours, which your principles forbid you to enjoy.

Excitement to industry. Many of you probably have been brought up with the expectation of an easy livelihood in the church, and of dreaming away your days in that indolence, which is its chief characteristick. Ye must renounce such hopes, and endeavour to be useful to society. Your talents must be employed in some active pursuit, and the means of your support will depend in great measure on your own exertions. This is now my fate : and to one, who does not wish to be a burden to society, the prospect is not wholly unpleasing. As my time has been hitherto employed in study, I cannot easily accommodate myself to the occupation of the merchant, the farmer, or the

the manufacturer : yet there are many other ways of being useful in society ; and the division of labour is beneficial in subjects connected with literature. Some have excellent ideas, but are not accustomed to commit their thoughts to writing ; they may wish to present the publick with an account of their voyages, their journeys, or of their reflections in any other mode of life, and to them, from my education, I might be capable of rendering assistance. The barrister is consulted on points of law ; and on his superiour knowledge or superiour eloquence depends his mode of subsistence. Prevented by an absurd regulation from entering upon that, which appears to me the best part of his office, I shall not intrude upon the other : yet perhaps I might be of use to some, in drawing up a case without technical forms, on which the opinion of the profession might be asked, the chance of success conjectured, or the truth or falsehood of a claim be made so manifest to common sense, that an honest mind would not even wish to obtain his end by the intricacy and fraud of legal phraseology. In the drawing up of memorials, in lectures on elocution, in any other employment suited to a man of letters, I would willingly employ myself ; and, with the intention of thus dedicating part of my time to the service of others, I look forward only to a proper independance, and the means of making my leisure hours more beneficial to myself and the publick.

Misrepresentations By shewing to young men entering into
 corrected. to life, what my hopes and my prospects are, I may put them upon thoughts, in what manner to employ their time, so as to preserve the true spirit of independance. I may also correct the false notions, which they might otherwise have imbibed from some strange misrepresentations, that the events, which have befallen me, have been beneficial rather than injurious to my fortune ;

tune ; that I have received, from some unknown quarter, more than sufficient to repay me for loss of time and my exertions. On many accounts it is right that such ideas should be corrected, or youth might grow presumptuous, instead of receiving that instruction, which may be derived from my example. The fact is, that instead of the affluence, which some have attributed to me, and which I never either solicited or expected, my income has been considerably diminished ; that, indebted as I am to my friends for assistance in support of what seemed to them and myself a publick cause, the whole of their subscriptions has been employed in that cause, and in the same cause I have cheerfully sustained myself a considerable expence. Let the readers therefore, whom I am addressing, not feed themselves with delusive hopes : the road before you now divides itself ; if your choice leads you to that which is rugged and steep, do not expect the ease and comfort, which are the lot of travellers on the other. In the career which ye have chosen, ye may be useful to yourselves and society ; and upon the whole, the difficulties ye have to encounter may, to a philosophical mind, render your journey through life as desirable as that which seems to be strewed only with flowers.

Conclusion. At any rate I may conclude with the advice before given to you : Do your duty, and leave the rest to providence. Be not deceived by the example of others into error : he who feeds the ravens, and in whose sight a sparrow is not without its value, will provide for your necessities. Too great anxiety after the things of this life is unbecoming in a christian, and will certainly lead to disappointment ; do your duty, as upon a close investigation of a question, and without sophistry or misapplication of your talents, every thing strikes you ; and for the rest rely with confidence on the protection of heaven,

A P P E N D I X.

No. I.

Copy of the paper relating to Whiston, in Dr. Kipling's affidavit.

Octr. 20mo. 1710.

Whiston's
sentence. **C**ORAM Dno. procanco. affident. &c.
comparuit Mr. Flackham, Townsend,
&c. et jurat. deposuerunt.

Decret. Mrm. Whiston monendum fore
ad comparend. 23

23

Put in scriptis

25

Put in scriptis

30

Put in scriptis

Dr. Roderick

Sir J. Ellys

Dr. Gower

James

James

Blithe

Covel

Balderston

Quadring

Richardson

Ashton

Fisher

Lany

20^o Octobr.

1710.

Unde Dns. procancellarius, assidentibus
et consentientibus.

Colliorum præfectis, sententiam ferendo
decrevit, declaravit et pronciavit, prout
sequitur :

In the name of God, Amen. I, Charles Roderick,
vice-chancellor of this university, do decree, declare, and
pronounce, that Mr. William Whiston, mathematic pro-
fessor of this university, having asserted and spread abroad
divers tenets contrary to religion received and established
by public authority in this realm, hath incurred the pe-
nalty of the statute ; and that he is banished from this
university.

Lata fuit humoi. sentia. per dnum.
procanc. præfente me ROBERTO. GROVE,
not. pub. et almæ universt. præd. regro.

No. II.

OBSERVATIONS

ON THE

AFFIDAVITS FILED BY THE UNIVERSITY.

The following observations came from the same highly respected friend, whose remarks on Whiston's case are given in page 52.

THE first part of the first affidavit is, if not designed, plainly calculated to mislead the counsel, and through them to impose upon the court. Dr. Kipling states in it, that he has carefully examined the statutes of the university; that is, as every one must understand him to mean, those in force, by which the university is now governed: he then quotes three statutes, the first of them from queen Elizabeth's first body of statutes, and the two others from her second, taking for granted the authority of each: but although there may be reason for allowing the authority of the old statutes, since the reception of statutes from the crown; there is none for ascribing any to the first body of queen Elizabeth's statutes, since the second was accepted by the university.

Dr.

Dr. Kipling hath alledged neither authority nor practice in favour of these statutes ; the repeal of them might be easily supported by both : but it is unnecessary to enter into the general question ; it is sufficient to observe, that the particular statute cited by the Doctor from the first body under the title “ *De cancellarii officio*,” is formally repealed, because expressly altered by that, which bears the same title in the second. The difference between the two statutes, in that part of them which is of any importance in the present question, is too obvious to escape the notice of any person, who pretends to have carefully examined them, and must therefore have been seen by Dr. Kipling ; but he was too modest to take upon himself to determine, whether, in case of two statutes given by the same authority being inconsistent with each other, the first was repealed by the second, or the second by the first. He chose rather to submit the point to the court, *et si curia vult decipi, decipiatur*.

It is clear that the Doctor saw the difference : he would otherwise no more have quoted the first with the second, than he did that of Edward the VIth, from which the first is copied ; indeed he must be supposed to quote it, on account of the difference, the first being something to his purpose, and the latter nothing. This was perceived by the attorney general, who contended, that the statute *de cancellarii officio*, in the first statutes of Elizabeth, and that bearing the same title in her second statutes, give power to the vice-chancellor to punish certain offences, *judicio suo* with the assent of the heads, which must be understood to mean proceedings in his own court, and is perfectly consistent with the wording of the statute *de concionibus* : but who can help seeing that this boasted consistency of the statute *de concionibus* is with the statute *de cancellarii officio* taken from the first statutes of Elizabeth, and not with that which stands in her second, and is alone of any authority ?

authority? And the foundation being removed, the reasoning built upon it falls of course to the ground. There is room to doubt whether the words “*judicio suo castigandos,*” in either statute, whether with or without the assent of the heads, must refer to proceedings in the vice-chancellor’s court; and supposing the same consistency in point of expression between the statute *de concionibus* and the statute *de cancell. officio* in the 12th of Elizabeth, as is allowed between that and the one in the 1st of Elizabeth, the vice-chancellor’s conduct in citing Mr. Frend into the court of the university might still be questioned, as it seems by no means to follow that the jurisdiction must be the same in all respects, because exercised by the same persons. The lord chancellor of England, the chancellors of the two universities, and in their absence, in some instances, the vice-chancellors are visitors of several colleges; but in cases of appeal from these colleges, the members of them, though otherwise subject to the jurisdiction of their respective courts, are not usually cited into the court of chancery, or into that of either of the universities. But the statute *de cancell. officio*, cited by Dr. Kipling from queen Elizabeth’s first statutes, may not only be proved to be of no authority, from its repugnance to that which bears the same title in her second: the same may be likewise shewn from the practice of the university in the three cases sworn to by the Doctor himself in his second affidavit. In the two first the vice-chancellor suspends *ab omni gradu*, &c. without the assent of any head; and in the third he punishes without the assent of a majority of the heads. Now if the statute *de cancell. officio*, given in the first year of queen Elizabeth, and not that given in her 12th year, were in force, the vice-chancellor could in no case *judicio suo castigare*, without the assent of a majority of the heads of colleges; I say a majority of the heads of colleges, for not only the reason of the thing speaks that to be the sense of the words “*cum assensu præ-*
fectorum”

fe&torum ædium ;” but if that sense be disputed, the attorney general must bid farewell to all consistency of that statute with the wording of the statute *de concionibus*, as in the latter the *assenfus majoris partis præfe&torum collegiorum* is expressly required.

I observe further, that if Dr. Kipling’s affidavit be true, that is, if the statute first quoted by him be in force, it renders the concluding clause of the affidavits made by Dr. Colman and Dr. Farmer perfectly trifling and ridiculous ; for what could be more trifling or ridiculous than to affirm upon oath, that it is made necessary by the statutes of the university, and has always been the usage of the court, as far as they know, for a majority of the heads of colleges to assent to the vice-chancellor’s sentence in some one particular instance, if it were generally allowed that such assent was by the law of the university requisite in all cases ?

To speak plainly, and at the same time dispassionately, if the reasoning employed in examining the first part of the first affidavit against the authority or validity of the *stat. de cancell. officio*, in the first statutes of queen Elizabeth, be thought conclusive, I must own I do not see how the person who made that affidavit can escape the charge of wilful perjury, without pleading such a degree of ignorance, as ought as effectually to disqualify him from giving evidence in any cause which depends on a knowledge of the laws of the university, as the charge itself would from giving any evidence in any cause whatsoever.

ARGUMENT drawn from the 30th cap. of Q. Eliz. statutes, intituled “ De electione procuratorum, and from the 38th, De præconum numero, &c.

The words of the former are “ Quos (procuratores) sic nominatos et præsentatos regentes eligere omnino tenebuntur, nisi legitima causa sive exceptio contra eisdem coram procancellario allegata, et coram eodem et majore parte præpositorum collegiorum probata et approbata fuerit.”

The words of the latter are, on occasion of certain offences, “ Cancellarius, advocatis sibi procuratoribus et ædium præfectis, cum assensu majoris partis eorum præconem munere suo dejiciet.”

The jurisdiction given to the vice-chancellor and heads by the statute de concionibus, seems to be of the same nature with that given in one of these statutes to the same persons, and in the other to the same persons with the proctors, and ought to be exercised in the same manner. But I imagine no body will pretend that the latter jurisdiction ever has been, or would be, exercised in the manner the former has lately been; that is, that a bedell, or person nominated and presented by his college to the office of proctor, ever hath been, or ought to be, cited into and subjected to a formal trial in the court of the university.

An ACT of PARLIAMENT was passed in the 13th of Eliz. confirming the privileges of the two universities.

The charter given by her, and those prior to it, were confirmed by this act, but not the statutes given in the
preceding

preceding year. By these charters the whole power of the court of the university is understood to be lodged in a chancellor; and to this day that part of the power of the court, which is exercised by the chancellor's commissary, a patent officer under him, is exercised by him alone, an appeal only lying to the vice-chancellor, as one does from him to the senate.

From these premises the following questions may arise.

Are not such parts of queen Elizabeth's statutes, as are inconsistent with the power given to the chancellor by charter, tacitly repealed by the act of parliament above mentioned?

And is it not therefore legally impossible that the jurisdiction given in the statute de concionibus to the vice-chancellor and heads should be exercised in the chancellor's court?

I pass over, for the present, the second part of Dr. Kipling's first affidavit, remarking only, in addition to my observations on Mr. Whiston's case, that the reference "prout in scriptis," thrice repeated, is applicable to any written account, and that I suppose the technical language of a reference to proceedings in the vice-chancellor's court, which might be expected from an officer in the court, would be "prout in actis." Concerning Dr. Kipling's second affidavit I shall have no reason to make any observation; I proceed therefore to make some on the affidavits of Dr. Colman and Dr. Farmer. These are entirely the same; and, after stating their respective residence and stations in the university, and out of it, and that they have both been twice elected into the office of vice-chancellor, set forth, *ist*, "That there hath been immemorially within the univer-

"sity,

“ sity, as they believe, a court called the vice-chancellor’s
 “ court.” This is true, as far as they intend, namely,
 that the court, now called the vice-chancellor’s, hath im-
 memorially subsisted, though not under that denomination.
 2dly, “ That the said court hath been held, as well in the
 “ lodge or chamber of the vice-chancellor, as in the con-
 “ sistory or law schools, or other public room within the
 “ university, at the discretion of the vice-chancellor for
 “ the time being.” This does not appear to me to be
 quite consistent with the citations of Waller and Duckett,
 which make part of Dr. Kipling’s second affidavit, and
 are the only ones produced. The language of these is :
 “ in the consistory, the usual place of judicature, in (or
 “ situate within) the university.” In Duckett’s case the
 court was held by adjournment in the lodge of Trinity
 college, not in that of the vice-chancellor, because Dr.
 Bentley, the master, whose presence was necessary to make
 a majority of heads, was unable to come to the law schools.
 3dly, “ That the said court hath, as they believe, taken
 “ cognisance of offences against the statutes of the uni-
 “ versity, as well as of other offences.” I much doubt
 the truth of this assertion, though I do not entertain any
 doubt of their belief of its truth. It can only be supported
 by a series of offences actually punished by the court,
 which were not offences by any law of the land, which
 were not attended with publick disturbance or private in-
 jury. Till the right of the court of the university, to take
 cognisance of offences against the statutes of the univer-
 sity, shall be established by a series of instances under the
 restrictions above mentioned, I shall think myself justified
 in denying it on the following grounds. It cannot be
 shewn that such a right is given in any of the charters
 granted by the crown. The power granted in these char-
 ters is not the power of punishing actions not punishable
 by any law of the land, but the power of hearing and de-
 termining such cases as were cognisable in other courts,

in a peculiar manner and form, and of punishing *secundum leges et consuetudines suas*, i. e. by suspension or deprivation of degrees, *vel secundum statuta regni jam edita seu in posterum edenda*. It was observed by lord Mansfield, in the case of Dr. Ewen, that the charter, meaning, I suppose, that of Elizabeth, from which the foregoing words are taken, speaks of common law crimes. Such a right or power comes not within the reason or design of these charters. The design of these charters was to establish or confirm a *forum domesticum* for the convenience of the members of the university, to which they might resort in all cases in which they were parties, and be thereby secured from being cited into distant courts, to which they would have been otherwise subject : but they were not subject to other courts in cases of offence against their own private statutes only. These, I may presume, every society has the power of hearing and determining on the spot. The reason then of the power given being considered as the just measure of its extent, I conclude that the court of the university hath a right only to take cognizance of those offences, which would be otherwise cognizable by some other publick court, civil or ecclesiastical.

Five instances of persons censured in the court of the university for different offences occur in the affidavits made by Dr. Kipling. I said before that I should have no occasion to observe any thing concerning them ; but as they may have been brought forward with the view of supporting that part of the affidavits made by Dr. Colman and Dr. Farmer, which I have just examined, and may be considered by them as the just foundation of that belief they have asserted : I will attempt to shew that not one of them comes up to the point they wish to establish, namely, the right of the court to take cognizance of offences merely statutable.

Waller was punished for a libel, an offence indeed against a statute of the university, but one also against the common law of the land.

Ducket was punished for atheism, a crime against which no one would expect to find a law in the statutes of a university.

Latham was suspended *ab omni gradu suscipiendo*, because he was out of his college in the night, and went to houses of ill fame. His crime consisted in frequenting houses of ill fame, and not in being out of his college in the night, as that, no particular law being stated, might be perfectly innocent. Now, though no person would look for a law against atheism in the code of a university, most persons perhaps will expect to find one against fornication. But such would be disappointed. No statute against that crime, or what might justly render a person suspected of it, as the frequenting of houses of ill fame, was ever enacted by the university before the year 1750 : the reason was, that the crime was always punishable by the ecclesiastical laws of the kingdom, which the court of the university had always the right of executing. As a proof that no law of the university existed so late as the year 1675 against frequenting houses of ill fame in general, the vice-chancellor and heads, as a caution to young men not to expose themselves to ecclesiastical censures, decreed, " That no scholar shall go into any house of bad report in Barnwell, on pain of being expelled the university." This, though no law, for the vice-chancellor and heads have not the power of making laws, was a proper caution, and at the same time a declaration what punishment might be inflicted on such offenders against the laws of the church. That Latham's punishment, though subsequent in time, was not immediately founded on this

decree, is evident from its differing from that specified in the decree.

Rutter and Osborne were both suspended *ab omni gradu suscipiendo*, not simply for being out of their colleges at unseasonable hours in the night, but for quarrelling in the streets, an offence against the peace of the town.

In the last case an undergraduate and a bachelor are charged with making a violent assault on the house of an inhabitant of the town, and behaving in a very indecent and scandalous manner to him and his family, reflecting on his daughters as unchaste women.

The offences charged in this last instance appearing in the course of the trial to have been committed at a very late hour of the night, the vice-chancellor mulcted each of them 6s. 8d. according to a particular statute. This the vice-chancellor had a right to do, though that circumstance made no part of the complaint against them, the offences being the same, and equally subjecting them to the censure of the court, whether committed in the night or in the day.

But it is time to return to the affidavits under consideration, the 4th clause of which sets forth, “ That they
 “ knew not of any court of the vice-chancellor and heads
 “ of colleges distinct from the vice-chancellor’s court
 “ above mentioned, or of any jurisdiction which the vice-
 “ chancellor and heads of colleges possess or exercise dis-
 “ tinct from that which the vice-chancellor possesses and
 “ exercises in the said court.” Nobody, I suppose, pre-
 tends to know of any court, strictly so called, of the vice-
 chancellor and heads of colleges, distinct from the vice-
 chancellor’s court. But when they say they knew not of
 any

any jurisdiction which the vice-chancellor and heads of colleges possess or exercise distinct from that which the vice-chancellor possesses and exercises in his court, I must beg leave to recommend to their consideration the jurisdiction given to the vice-chancellor and heads in the statute before referred to, in the case of a person nominated to the office of proctor, but objected to on some account, within a limited time ; and to that given to them in another statute, in the case of a bedell accused of certain crimes, to which it is contended, that the jurisdiction given in the stat. de concionibus is perfectly analogous, and ought to be exercised in the same manner. The last clause, however true in itself, was observed at setting out to be rendered trifling by the first part of Dr. Kipling's first affidavit ; but for that, not Dr. Colman or Dr. Farmer, but Dr. Kipling is answerable.

I come now to the second part of Dr. Kipling's first affidavit. The only things observable in it are the cases of Rush, fellow of Christ-college, and Adams, fellow of Peter-house. The former happened in the year 1609, thirty-nine years after the stat. de concionibus was enacted, and the latter in 1637, twenty-eight years after the former instance, and 67 after the statute was enacted. Though it is well known that several instances of persons censured under that statute occurred before Rush, and probably some others between him and Adams, theirs are the only ones that have been thought to furnish any thing to the purpose, i. e. to the vindication of the vice-chancellor's proceedings in the court of the university against Mr. Frend. Let us see how well they are calculated to effect this. Mr. Frend complained of being called into the vice-chancellor's court. Is there any evidence of Rush and Adams being called thither ? Dr. Kipling does not swear that the proceedings against them are part of the

Acta Curiaë, or taken from any register or book so intitled : he only swears that they are taken from books or papers in the possession of the registry, which they might be, without being any thing to the purpose. This is the more remarkable in the cases of Rush, Adams, and Whiston, as all the other cases in this and the subsequent affidavit are either expressly stiled acts of court, or said to be extracted from books bearing that title. If Dr. Kipling could have given evidence upon oath, that the cases of Rush and Adams were taken from the Acta Curiaë, he doubtless would, as the interest of his cause so much required it. Mr. Trend complained of being cited by the vice-chancellor alone. It does not appear, from his case, that Rush was so cited ; and it appears that Adams was first ordered to appear by the vice-chancellor and heads. Adams was absent from his college at this time. No citation, however, was sent to him ; but his return, in consequence of a letter from a friend, was expected at the end of a second month. Mr. Trend objected to a trial in an open court. Not the least ground for any complaint of this kind was afforded to Rush or Adams. There is no mention of crier or witnesses, or any other persons but the vice-chancellor, heads, and registry. Mr. Trend objected that no pains were taken by the vice-chancellor and heads to induce him to renounce his errors by arguments against them. Much pains of that kind appear to have been taken with Rush and Adams. Mr. Trend objected, that no erroneous opinions were stated in the form of recantation offered to him : in the forms of recantation presented to Rush and Adams, the erroneous opinions advanced by them were particularly specified. Mr. Trend complained of being subjected to a sentence in publick court : in Adams's case no sentence was passed, but the meeting dismissed : and that passed upon Rush has also the appearance of a private act, it being an order, or warrant of Mr. Whiston, by the registry.

gistrary, in the presence of another person. Rush's sentence included likewise exclusion from his college, as well as banishment from the university.

From this comparison of the two cases with that of Mr. Frend, the internal circumstances of them seem to conspire with the want of external evidence to the contrary, to shew that they were not transacted in the publick court of the university, or, if we could suppose them to have been transacted there, that the conduct of the vice-chancellor in his proceedings against Mr. Frend was the most irregular possible in many respects, and contrary to the only precedents alledged in vindication of it.

5th November, 1794.

P. S. Mr. Frend objected to a promoter; none appears in either of the cases.

No. III.

EXTRACTS FROM DR. KIPLING'S AFFIDAVIT.

THO. KIPLING, D.D. and deputy regius professor of divinity in the university of Cambridge, faith, that he hath carefully examined the statutes of the said university of Cambridge, and amongst them are three statutes, respectively made and granted by the late queen Elizabeth, in the first and twelfth years of her reign, and respectively entitled "De Cancellarii Officio," and "De Cancellarii Officio, cap. 42," and "De Concionibus, cap. 45;" and that in the said three statutes are contained the several laws, ordinances, and injunctions, provisions and directions, as are contained and set forth in the three several paper writings hereunto annexed, marked respectively with the letters A, C, and D; and the deponent further faith, that he hath also carefully examined the several books and papers and records of the said university, which are kept by the registrar of the said university, and in his possession; and that in such books, papers, and records, are contained the several cases, judgements, sentences, and other proceedings, as are set forth in the several paper writings hereunto annexed, marked respectively with the letters E, F, G, H, and I.

Letter A.

Statuta Reginæ Elizabethæ anno 1^o edita.

De Cancellarii Officio.

Cancellarius potestatem habebit ad omnes omnium scholasticorum atque etiam eorum qui scholasticorum famuli sunt

sunt controversias summarie et sine ulla juris solennitate præter illam quam nos præscribemus secundum jus civile et eorum privilegia et consuetudines tum audiendas tum dirimendas ad congregationes graduatorum et scholasticorum convocandas ad homines dignos gradibus scholasticis ornandos qui omnia munia scholastica his contenta statutis expleverint et ad indignos rejiciendos ab iisdem et repellendos ad omnes eorum violatores puniendos ad providendum præterea ut singuli academix ministri in suo officio se contineant ignavos grassatores rei suæ dissipatores contumaces nec obedientes suspensione graduum carcere exilio aut alio leviori supplicio judicio suo et assensu præfectorum ædium castigandos.

Letter C.

Statuta Reginæ Elizabethæ anno 12^o edita.

De Cancellarii Officio, cap. 42.

The same words are used as above, as far as “carcere”—
aut alio leviori supplicio judicio suo castigandos non licebit tamen cancellariis aliquem scholarem exilio multare aut aliquem pileatorum aut præfectorum collegiorum incarcerare absque consensu majoris partis præfectorum collegiorum.

R U S H ' s C A S E.

Letter E.

Septembris 15^o 1609 fore Dn^o Procanc. &c. in Pntijs Drm
Ratcliff Richardfon Branthwayt Coval et cora M^{ro} Chapman.

Officiu Dni & Nicholau
Ruth in artibus M^{ra} ac
Collij Xti in Univerf. Cant.
Sociu.

ADAMS's

A D A M S ' s C A S E .

Letter F.

Att the Consistory 17^o Julij A^o Dom. 1637,

Present

Doct^r Comber procan.

Doct^r Beale, Doct^r Bambrigge

Doct^r Lancy

Doct^r Martin

Doct^r Eden.

It is decreed that Mr. Adams shall be warned to appeare this daye month and bring in his sermon.

Att the Consistory 14^o Augusti 1637,

Present

Doct^r Comber, Dean

Doct^r Beale, Doct^r Smith

Doct^r Martin.

It is decreed for Mr. Adams of Peterhouse to appeare this daye, and this daye Mr. Hughes returned and certified that he had sought for Mr. Adams according to Mr. Vice-chancellor's decree, made 17^o July 1637, and that Mr. Bankes the president told him that Mr. Norwich told him that he had sent a letter for Mr. Adams to appeare accordinge to Mr. Vice-chancellor's decree, and that as yet he heard no answer of that letter, and therefore he desired that he might be expected for a month, or such time as Mr. Vice-chancellor shall think fitt. Unde facta precognizance po pred Mro Adams non comparente Dominus expectavit eum in istum diem ad mensem.

Die Lunæ viz. 11^o die Mens. Septembris 1637,

Present

Doctor Comber, pcan.

Doctor Smith

Doctor Beale, Doctor Bambrigge

Doctor Love, Doctor Bromrigge

Doctor Sterne, Doctor Batchcroft

Officiu Domini con	}	Mr. Adams expectatur in hos qui-
		bus, &c. peco.
Mru Adams....	}	M ^{ro} . Adams non co continuatur
		causa in istum diem ad mens.

Die Lunæ viz. nono die mens. Octobris Anno Domini
1637,

Present in consistorio

Doctor Comber, pcan.

Doctor Collins, Doctor Warde

Doctor Sterne. Doctor Bambrigge came after-
wards, while Mr. Riley was
there, but after Mr. Adams
was gone.

Letter

Letter G.

ACTS OF COURTS, 1752.

At a court holden in the consistory of the university of Cambridge, between the hours of ten and eleven on the 25th day of June 1752, before the right worshipful John Wilcox, D. D. vice-chancellor, the right reverend Edmund Lord Bishop of Chester, the worshipful John Newcome, Roger Long, Wm. Richardson, Robert Smith, Fra. Sawyer Parris, John Green, Kenrick Prescot, and Philip Yonge, respectively, D. D. being his assessors.

Me present. T. Bennett, Notary Publick.

The office of the judge promoted by Zach. Brooke, B. D. against William Waller, B. A. Summons went forth, which being returned, and proclamation made, said Waller appeared, and was charged by Mr. Brooke with being the author of a prophane blasphemous libel, intituled David's Prophecy, &c. which libel was then delivered into court. Said Waller confessed that he was the author of the said book which was then shewn to him, and that he delivered it to be printed and published; that he was sorry for it, and declared that he was not now in the same sentiments as when he wrote it.

The judge deliberated, and adjourned the court to four o'clock in the afternoon in the consistory, when and where said Waller was admonished to attend.

At

At a court holden between the hours of four and five in the afternoon, on the 25th day of June 1752, in the consistory of the university of Cambridge, before the right worshipful John Wilcox, D. D. vice-chancellor, the right reverend Edmund Lord Bishop of Chester, the worshipful John Newcome, Roger Long, William Richardson, Robert Smith, Fra. Sawyer Parris, John Green, Kenrick Prescott, and Philip Yonge, respectively, D. D. being his assessors.

Me present. T. Bennett, Notary Publick.

The office of the
judge promoted by
Zach. Brooke, B.D.
against William
Waller, B. A.

Proclamation being made, Mr. Brooke and S. Waller both appeared. The vice-chancellor having deliberated with the said nine assessors, did by and with the assent, and consent of them all, pronounce and declare the said William Waller expelled this university.

Adjourned to Wednesday, 1st of July next, at three o'clock in the afternoon.

THO. KIPLING, doctor of divinity, and deputy regius professor of divinity in the university of Cambridge, maketh oath, and faith, that he hath carefully examined two several books belonging to the said university, and kept by the registrar thereof, the one of which books is on the back thereof marked "Act. Cur. 1690—1709;" and the other of which books is at the head of the first page thereof, intituled "Acts of Court, 1752." And that in the first of the said books are contained the several cases, judgments, sentences, and other proceedings as are set forth in the paper writing hereunto annexed marked with the letter (K); and which cases, and other proceedings, were, as this deponent believes, and as appears to him.

him by an entry contained in the said first mentioned book, and in the second page next preceding that wherein the same cases are entered, were heard and determined in the year 1697. And this deponent further saith, that in the said last mentioned book, are contained the several cases, judgments, sentences, and other proceedings, as are set forth in the paper writing hereunto annexed, marked with the letter (L.)

Letter (K.)

Die Veneris, viz. 18 Martij, Coram Dr. James procanco.

presente me Jacobo Halman, Regro.

Dns. ex Officio, Quib. &c. compar. Latham; and being charged that he was lately out of his college in the night, and that he went to houses of ill fame, in presentia partis fatentis alleg predict esse vera unde dns. juxta statuta suspended him ab omni gradu suscipiendo.

Officium Dni. Compar. Rutter et Osborne, whom
promotu. c. Tho. Mr. Vice-chancellor charged for being
Rutter et Rich. out of their colleges at unreasonable
Osborne. hours in the night, and quarrelling in
the streets, in presentia partium fatentium allegat predict esse vera unde dns. juxta statuta suspended them both ab omni gradu suscipiendo.

No. IV.

Stile of proceedings taken from a book in possession of the
registrar, called Ecclesiastical Causes and Censures.

The following is all that relates to Charke's case :

Coram domino doctore Bing, procanc. 5 die Feb. 1572,
affidentibus doctores Pern, Hawford, Kelk, Mey, Cha-
derton, Harvey, Ithel, Whitgift, Shepherd, Goad, and
Aldardge.

Sententia lata v. Maj. Charke. Quibus, &c. comparuit Wm. Charke
et interrogat. dno. procancellario de dua-
bus illis propositionibus prius illi objectis et in concione
sua habitis, viz. (stating the two propositions) unde do-
minus cum assensu prefectorum collegiorum prefat pro-
nunciavit D. Wm. Charke incidisse in poena statuti in ea
parte facti ideo excludend. a collegio suo de qua sententia,
D. Charke appellavit cui appellacio non deferend.

IN BROWN'S CASE.

Coram domino doctore Whitgift procanc. 24th Nov.
1573.

Sententia lata v. Nels. Brown Sec. Col. Quibus, etc. comparuit, Ds Brown ;
and it goes on in nearly the same
as in Charke's case.

In

In MILAYNE's CASE.

Coram Dno. Doctore Bing, procancellario assistentibus doctoribus Pern, Hawford, Whitgift, Harvey, Majus, Shepherd, Legg.

Mr. Millen in artibus Mr. Socius Collegii venit coram dno. procancellario et assistentibus supernominatis qui interrogatus de quibusdam assertionibus a se prælatis in concione sua infra ecclesiam stæ Mariæ quarto die Oct. affirmavit se easdem protulisse deinde dominus procancellarius et assist. monuerunt ei ut retractaret easdem sed Millen recusavit unde Dnus. procancellarius de consensu præpositorum tunc pronunciavit D. Millen incidisse in pœna statuti academice et ab academia expellendum decrevit.

In BARRET's CASE.

Coram venerabili viro Dn. Doctore S— deputato Doct. Duport, procancel. Cant. Doctoribus Goad, Tindal, Whitaker, Berral, Jegon, Preston, M. Chaderton et Clayton, præfectis collegiorum, 5 Jun. in præsentia me T. Smith.

Dom. Procanc. et
Cojudices prædicti ex
officio W. Barret in
artibus Mr. Soc. Coll.
Cali.

The entry then states the offence of preaching against the reformers, and the requisition to recant. There are no marks of originality, it being roughly copied, and fastened together bookways with the other papers.

In the cases of JOHNSON and BAMBRIDGE,

Dominus ex officio 23d Jan. 1588, Coram eodem Dno.
 v. Mag. Bambridge. procancell. assistentibus D. D. Fern,
 Tindal, Copcott, Legg et Bett, et in consistorio hora octa-
 va universitatis in præsentia Thomæ Brooke, Not. Pub.

Acta facta et gesta coram venerabili viro dno. Thoma
 Neville, S. T. P. atque universitatis Cant. procan. assisten-
 tibus tunc et ibidem nobilibus viris dnis. doctoribus Hill,
 Tindall, Copcott, Bing, Legg et Mrs. Andrew et Preston,
 9 die mensis Septemb. 1589, in præsentia Thomæ Smith,
 N. P. in consistorio universitatis.

The entries in this and Johnson's case consist of protests,
 explanations, canon law opinions, and as in Strype's
 annals.

On these imperfect entries indeed much cannot be
 grounded; but the history of the cases throws a light
 upon them; and as in the two full cases under the statute
 de concionibus produced by the promoter, there is an
 evident difference in the stile and whole proceedings,
 from the cases also produced by him, and clearly proved to
 belong to the vice-chancellor's court, the reader, it is pre-
 sumed, has had every thing laid before him which can en-
 able him to form a proper estimate of the question.

In page 142, are given by Dr. Kidding the cases of
 Latham and Rutter, referred to in page 79, which
 L. entirely

entirely overthrow his argument on the first statute given by Elizabeth on the power of the chancellor; for the vice-chancellor punishes without the consent of the heads, contrary to the first statute of Elizabeth.

I N D E X.

	A.	Page
ADAMS, case of	- - - -	64
The heads cannot agree	- -	65
Recantation proposed by the vice-chancellor		
not allowed by the heads	-	66
Affidavits of Colman and Farmer	-	55
Kipling	- - - -	57, 136
Observations on them	- -	56, 123
Appeal to the senate, grounds of	-	9
Refused to Chark	- -	11
Authour, account of the	- -	101
Publick renunciation of his errors	-	105
Consequences of it	- -	106
Confirmation of this renunciation	-	108
Effects of censures without arguments upon		
him	- - - -	112
Address to students	- -	117

B.

Baret, case of	- - - -	26
Recantations	- -	27, 37
Sentiments of an archbishop	-	33, 38
L. 2		Bambridge.

	Page
Bambridge, case of	24
Banishment of Chark	11
Milayn	18
Whiston	50
Rufh	62
Baro's case	40
Browning, case of	15
Brown's case	16
Account of the conduct of the heads	16
Recantation	17

C.

Cabal of the twenty-seven, views of	1
Make religion a pretence	4
Avowed reasons of	5
Chark, case of	11
Chadwick, case of	23
Conference, the mode of proceeding with offenders against the statute de concionibus,	12, 13, 24, 27, 33, 41, 42, 43, 49, 59, 61
Covel, case of	42

D.

Ducket, case of	54, 69
-----------------	--------

E.

Expulsion in vice-chancellor's court of Ducket and Waller	55, 69, 70
--	------------

J.

Jesus college, proceedings in	6
Johnians, conduct of the	31
Johnson's case	24
Jowett, Dr. report concerning	8
Jury, trial by	98
Kenyon,	

K.

	Page
Kenyon, Lord, calls Peace and Union a flagitious libel - - - - -	85
Insinuates that its authour must be an immoral and irreligious man - -	86
Remarks on the impetuosity of this judge	97
King's Bench, application to the court of -	7, 10
Pleadings in - - - - -	71
Decision of the judges - - - - -	84
Remarks on this decision - - - - -	96
Kipling the promoter, affidavits of - - -	57, 136
Remarks on - - - 64, 70, 71, 79, 88, 123	

M.

Milner, Dr. report concerning - - - - -	8
Milayn's case - - - - -	18
Contents of his sermon - - - - -	19

O.

Obsolete statutes, use of - - - - -	94
-------------------------------------	----

P.

Peace and Union, contents of - - - - -	2
Proclamations, effects of the late - - - - -	5

R.

Recantations by Brown - - - - -	17
Smith - - - - -	22
Baret - - - - -	27, 37
Offered to Rush - - - - -	60
	Offered

	Page
Offered to Adams - - - -	66
to Whiston - - - -	45

S.

Sects of christians compared together - -	109
Smith's case - - - -	21
Sentence of Whiston - - - -	50, 121
Rush - - - -	63
Statute de concionibus, on what motives framed -	90
Effects of - - - -	91
Under the Brunswick family - -	93
Stile of Proceedings in former times, taken from an old MS. - - - -	143

V.

Vice-chancellor and heads, letter of - -	12
University, queries to the - - - -	95

W.

Waller's case - - - -	55, 69
Whiston's case - - - -	44
Positions attributed to him - - - -	45
Protest - - - -	49
Sentence - - - -	50
Remarks on this case - - - -	52
Record of this case in Kipling's affidavit	121

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